

Hegel and Right

A Study of the
Philosophy of Right

PHILIP J. KAIN

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Contents

Acknowledgments	vii
Abbreviations	ix
1. The Idea of Right	1
Spirit	2
Freedom	10
Right	17
End of History	22
Structure, Method, and Development	32
2. Abstract Right	39
Right and Spirit	39
Property	41
Punishment	43
3. <i>Moralität</i>	55
The Right of Subjectivity	55
The Categorical Imperative	58
<i>Moralität</i> and Freedom	79
4. <i>Sittlichkeit</i> : The Family	83
Transition from <i>Moralität</i> to <i>Sittlichkeit</i>	83
The Family and Love	93
Marriage	100

5. <i>Sittlichkeit</i> : Civil Society	109
Civil Society as <i>Sittlichkeit</i>	109
The Failure of Civil Society?	114
Corporations	121
The Solution	128
Alienation	132
6. <i>Sittlichkeit</i> : The State	137
Democracy vs. Monarchy	137
The Realization of Rationality	146
World History	149
The Absolute	163
Conclusion	169
Notes	175
Bibliography	221
Index	235

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Abbreviations

CPR	Kant, <i>Critique of Pure Reason</i>
CPrR	Kant, <i>Critique of Practical Reason</i>
EL	Hegel, <i>The Encyclopaedia Logic</i> (Geraets, Suchting, Harris translation)
EU&D	Freyenhagen, "Empty, Useless, and Dangerous?"
<i>Groundwork</i>	Kant, <i>Groundwork of the Metaphysics of Morals</i>
H&O	Kain, <i>Hegel and the Other: A Study of the Phenomenology of Spirit</i>
HER	Williams, <i>Hegel's Ethics of Recognition</i>
HET	Wood, <i>Hegel's Ethical Thought</i>
ILHP	Hegel, <i>Introduction to the Lectures on the History of Philosophy</i>
IUH	Kant, "Idea for a Universal History from a Cosmopolitan Point of View"
KET	Wood, <i>Kant's Ethical Thought</i>
KPP	Kant, <i>Immanuel Kant: Practical Philosophy</i>
LNRPS	Hegel, <i>Lectures on Natural Right and Political Science</i>
LPS	Hegel, <i>Lectures on the Philosophy of Spirit 1827–8</i>
LPWHI	Hegel, <i>Lectures on the Philosophy of World History: Introduction</i>
LPWHv1	Hegel, <i>Lectures on the Philosophy of World History, Volume I</i>
M&MPT	Kain, <i>Marx and Modern Political Theory</i>
MECW	Marx, <i>Marx Engels Collected Works</i>

MISC	Hegel, <i>Miscellaneous Writings of G. W. F. Hegel</i>
MM	Kant, <i>The Metaphysics of Morals</i>
<i>Natural Law</i>	Hegel, <i>On the Scientific Ways of Treating Natural Law</i>
PH	Hegel, <i>Philosophy of History</i>
PhS	Hegel, <i>Phenomenology of Spirit</i> (Miller translation)
PM	Hegel, <i>Hegel's Philosophy of Mind</i>
PP	Kant, <i>Toward Perpetual Peace</i>
PR	Hegel, <i>Elements of the Philosophy of Right</i> (Nisbet translation)
PR (Dyde)	Hegel, <i>Philosophy of Right</i> (Dyde translation)
PR (Knox)	Hegel, <i>Hegel's Philosophy of Right</i> (Knox translation)
PR (White)	Hegel, <i>The Philosophy of Right</i> (White translation)
PW	Hegel, G. W. F. Hegel <i>Political Writings</i> (Nisbet translation)
SL	Hegel, <i>Hegel's Science of Logic</i>
UULFCI	Geiger, "What is the Use of the Universal Law Formula of the Categorical Imperative?"

The Idea of Right

This book is a study of Hegel's *Philosophy of Right*, a text published in 1821, when Hegel was fifty-one years old—some three years after he accepted the chair in philosophy at the University of Berlin and ten years before his death.¹

Hegel's major writings include the *Philosophy of Right*, the *Phenomenology of Spirit* (1807), the *Science of Logic* (1812–16), and the *Encyclopaedia of the Philosophical Sciences* (1817, 1826, 1831). We find Hegel's mature thought on moral and political philosophy in the *Philosophy of Right*, and we find a briefer version in the section of the *Encyclopaedia* dealing with objective spirit. Hegel wrote the *Philosophy of Right* as a textbook for students attending his lectures. He would comment on specific paragraphs, clarify them, and expand upon them. This material was later added to the text.²

Hegel is difficult to read. In the past it was fashionable to attack his political thought as totalitarian and simply dismiss it outright.³ More recently, scholars have done a *much* better job of understanding him and have increasingly come to recognize his importance as a philosopher, though some defend him even when they should not.

My approach is to avoid both extremes. I try to read Hegel *against the grain*, that is, to disagree with him, or to disagree with standard interpretations of him, not at all to dismiss him, but to gain a deeper grasp of his thought. I disagree so that I can better understand, so that I can try to make his thought more accessible, and so that I can draw out philosophical points of independent importance.

Before we plunge into the details of the *Philosophy of Right* and risk becoming lost, it would be helpful in this first introductory chapter to try to get an overview, so that as we proceed we might hope not to lose sight of the wood for the trees. Let us begin with an examination of the Preface and the Introduction.

Hegel tells us that his concern will be with the science of right and that the subject matter of the philosophical science of right is the Idea of right.⁴ He tells us that by “right” he means not just civil right, but morality (*Moralität*), ethics (*Sittlichkeit*), and even world history.⁵ Furthermore, he tells us that the Idea of right is freedom.⁶ This is all extremely obscure. To begin to understand how right, freedom, and the Idea are connected, as well as what they mean, we must begin with Hegel’s concept of spirit. In the Preface and the Introduction, Hegel tells us very little about spirit, except, and again very obscurely, that the basis of right is spirit and that the system of right is actualized freedom produced by spirit from within itself.⁷

Spirit

To get an introductory sense of what Hegel means by spirit (*Geist*), we might think of things like the “spirit of an age,” the “spirit of capitalism,” or the “American spirit,” that is, something like a worldview in which a people expresses its aims, aspirations, values, role, significance, and meaning to itself. Hegel calls this the Idea. This people, then, through its activity in the world will embody this Idea in its laws, practices, customs, institutions, ethical life, art, culture, philosophy, religion, and so forth. In this way the Idea becomes objectified, concretized, institutionalized. It is no longer a mere idea, but a reality. As this concretized Idea is recognized by its people, it will animate their will, passion, activity, and drive. They will act in history—act on their Idea.⁸

A people constructs its Idea. They set its aims, build its institutions, establish its laws, and engage in its practices. At the same time, though, the Idea also constructs this people. It forms their customs, inspires their work, molds their values, gives them meaning, and shapes their culture. In Hegel’s view it is stamped on every aspect of their life. One spirit permeates everything in an age.⁹ It is “the common denominator of its religion, its political constitution, its ethical life, its system of justice, its customs, its learning, art, and technical skill, and the whole direction of its industry.”¹⁰

Individuals take in and internalize the knowledge, practices, technical know-how, strategies, values, and so forth of their spiritual world. They then work these over, perhaps develop them, even produce something new, and deposit this back where others can take up and repeat

the process. The spiritual world thus develops, as does this people. At the same time that a spirit produces a people, a people also produce their spirit. Spirit is nothing but the outcome of individual contributions. Spirit produces a people, who then transform their spirit.¹¹ In the *Philosophy of Mind*, Hegel speaks of the

spirit that makes world-history. In this case, there no longer stands, on the one side, an activity external to the object, and on the other side, a merely passive object. . . . Thus, for example, the people and the time which were moulded by the activity of Alexander and Caesar as *their* object, on their own part, qualified themselves for the deeds to be performed by these individuals; it is no less true that the time created these men as that it was created by them; they were as much the instruments of the mind or spirit of their time and their people, as conversely, their people served these heroes as an instrument for the accomplishment of their deeds.¹²

There are two perspectives from which spirit can be viewed: first, the perspective of the whole, the perspective of absolute totality, the perspective of the Idea, where, Hegel tells us, the spirit of a people appears as “one great individual.”¹³ Nothing is higher than spirit, and spirit is not concerned with anything other than itself. Second, we can view spirit from the perspective of the people—from within their worldview, from the perspective of their particular interests, desires, and passions, which are limited, particular, and conflicting. Hegel tells us that these are two sides to the same coin—the warp and the woof of history—the perspective of the Idea and the perspective of the passions.¹⁴

From the perspective of the Idea, we might metaphorically speak of the intentions of a mind. Nothing is outside this spiritual consciousness—this absolute totality. Hegel even calls it God.¹⁵ Moreover, this Idea has a drive to unfold itself, to become aware of itself, to reflect upon itself, to know itself, to know everything in itself.¹⁶ This reflection, however, is inseparable from, is nothing but, the reflections of a people¹⁷—their concerns, aspirations, values, self-understanding, and goals. Spirit, the Idea, the absolute, requires humanity for its realization.

From the second perspective, that of the passions of a people, we see how the Idea must be acted upon if it is to become determinate, objectified, concrete. It must be recognized by a people to become actual.¹⁸

The Idea depends upon a people to become real, and the people depend upon the Idea if they are to actualize their aims, significance, and meaning—to realize themselves and become what they are.

We have said that spirit permeates everything in an age, and this, Hegel also tells us, includes the constitutions of states.¹⁹ A state is the expression of the spirit of a people, and the state's constitution depends upon the development of that spirit.²⁰ Constitutions are not *made*, for Hegel—though they are constructed. That is, Hegel does not think we should view constitutions as created by individuals who draft a document, ratify it, and so forth. I suspect Hegel would insist upon this even in cases, like that of the United States, where this sort of thing actually took place. Hegel thinks a constitution is the “labor of centuries.” It is produced bit-by-bit over a long period of time.²¹ The laws of the state carry the “authority of millennia . . . [t]he whole of mankind has labored upon them. . . .”²²

We must notice that there is a democratic element involved here. While Hegel rejects the notion that a constitution should be made (written by a group of people and ratified by a vote), that, at least in part, is because we participate at a higher and much more general level. A people's entire public world, their laws, institutions, practices, customs, traditions, religion, and so forth have been constructed by them over time. To single out and privilege a brief moment when a document was written and ratified would be to reduce, perhaps even to trivialize, a process of constitution that had been going on for a much longer period of time at many other levels.²³ Hegel also rejects the notion of a social contract.²⁴ That too would reduce the construction of the state to a brief moment and would not credit the people with anywhere near enough input into the process. At the same time, it is quite clear that Hegel has a lot of negative things to say about democracy. Hegel is not as democratic as we could wish, and I have no desire to excuse his real democratic shortcomings. But Hegel is not an authoritarian or a supporter of tyranny—and to think that he is a totalitarian, as Popper does, is a real blunder.²⁵ Through spirit, for Hegel, we construct laws and institutions to fit ourselves such that we can be free and self-determined.

Hegel is famous for saying that the state is “the march of God in the world.”²⁶ This should not appear outrageous—if what has been said so far has been understood. It is the very same spirit that creates both the state and religion. It is the very same spirit that is represented as God and as the state.²⁷ We have said that spirit is our construction. The

state is obviously our construction. It is Hegel's view that God is also our construction.²⁸ Thus, to say that the state is the march of God in the world is to say that it is the march of spirit in the world, and that is to say that it is *our* march in the world. Religion is not something external called in to support or regulate the state. Nor is it something transcendent to which the state must subordinate itself. Religion is the expression of spirit, as is the state. And spirit is our spirit. We construct it—as we do religion, the state, law, public institutions, and so forth.

Hegel's God is not an orthodox transcendent deity that directs things from above and outside. God is immanent for Hegel. God is within the world. God is a construction of spirit, that is, of our cultural consciousness. God is not a separate metaphysical onto-theological entity.

From this, however, it does not follow that God is nonexistent. To understand Hegel, we must get beyond a prejudice against construction.²⁹ It is not the case that something constructed is unreal or does not exist. Scientific theories are constructions. That does not mean that what they allow us to discover is false or nonexistent. Government is a construction. It is nothing but a complex constellation of ideas, beliefs, values, practices, institutions, laws, and policies.³⁰ Governments exist. They are real. It is even possible that a government can be a *good* government.

There is something else we must notice about constructions. We must see that it can be possible to find more wisdom in our constructions than we would ever have expected ahead of time. Our cultural constructions may have a depth, complexity, and rationality that is worth discovering and unpacking. It is not the case that there can be nothing there except what we intended to put there. Like works of art, they may contain a deeper truth than could have been imagined or intended in advance.

One might want to object that despite the fact that some constructions are real, it is possible, after all, not to believe in God, and thus take that construction not to be real. This points to something else we must notice about constructions—even ones we think are false. Some such constructions have existed for us for a long period of time. They have shaped us and formed us—and thus they have actually been cultural *realities*. Even if God does not exist, what we have historically become is inseparable from this God. There is an important sense—a cultural sense—in which we cannot deny the existence of God, even if we do not believe in the existence of God.

To understand how God is our construction, yet is real, we must understand Hegel's idealism. He says,

Every activity of mind [*Geistes*] is nothing but a distinct mode of reducing what is external to the inwardness which mind [*Geist*] itself is, and it is only by this reduction, by this idealization or assimilation, of what is external that it becomes and is mind [*Geist*]. . . . This material, in being seized by the 'I,' is at the same time poisoned and transfigured by the latter's universality; it loses its isolated, independent existence and receives a spiritual one.³¹

Hegel also says, "the positive reality of the world must be as it were crushed and pounded, in other words, idealized."³² Thus, he thinks, "An out-and-out Other simply does not exist for [*Geist*]."³³ Hegel's idealism does not force us to deny, as did Berkeley's subjective idealism, that the object out there really exists. Hegel's view is that the essence of a thing, what it really is, is what reason *knows* about it. This does not imply a denial of actual objects or things. Take, for example, matter. Hegel is quite able to admit the existence of matter.³⁴ Hegel might consult the best physicists of his era. He could listen carefully to everything they say about matter, and accept it fully—after all, philosophy has no business telling science what it has discovered about its objects. It is just that where the physicists might end up putting all the emphasis simply on the *matter*, Hegel will insist on putting the emphasis on the *concept* of matter. After all, everything the physicists will have given him is a concept. If the physicists were to insist that, no, what they were talking about was something out there *beyond* the concept, Hegel would simply ask them to tell him about what it is precisely that they take to be out there beyond the concept. And they would, of course, end up giving Hegel more concepts. Hegel need not deny there is something *out there*. He just thinks that in coming to know the thing out there, what it is, we cannot but conceptualize—that is, idealize. Only in doing so do we know the thing. And all that we know, what the thing really is, its essence, is ideal. This is what Hegel means when he says, "God is attainable in pure speculative knowledge alone and is only in that knowledge, and is only that knowledge itself, for He is Spirit. . . ."³⁵ God is constructed by thought and God exists, is real, for that thought.

Instead of talking about God, however, philosophy wants to talk about the absolute. The same spirit, Hegel tells us, that appears to imaginative or representational thinking as God, appears to philosophical thinking as the absolute.³⁶ "The aim of spirit is . . . to make itself

conscious of the absolute. . . . To become actively aware of this means to do honour to God or to glorify the truth.”³⁷ The “aim of philosophy . . . is to grasp the Absolute as spirit.”³⁸

The absolute, as Hegel understands it, includes absolutely all of reality. There is no reality, no unknown thing-in-itself, left outside. Moreover, the absolute is not other to me—it is not heteronomous. I am fully at home with it. It is absolutely mine—my very identity.³⁹ Hegel insists that the absolute (or the Idea, or God) should not be thought of as distant and beyond. It is “wholly present, what we, as thinkers, always carry with us and employ, even though we have no express consciousness of it.”⁴⁰ Hegel’s God, or the absolute, is not an orthodox, transcendent deity that directs things, as it were, from above and outside the world. The absolute is immanent, within the world, within our cultural consciousness, an evolution of it. It is the cultural consciousness, the worldview, of peoples. It “is only in that knowledge, and is only that knowledge itself. . . .”⁴¹ The absolute is constructed by a people as its highest and truest meaning, significance, value, and goal. It is embodied in their laws, practices, institutions, philosophy, and religion.⁴² “The province of the spirit is created by man himself; and whatever ideas we may form of the kingdom of God, it must always remain a spiritual kingdom which is realized in man and which man is expected to translate into actuality.”⁴³

In the Preface, Hegel tells us that the task of the *Philosophy of Right* is to comprehend the state. It must not try to construct the state as it *ought* to be, but to comprehend what *is* and to recognize it.⁴⁴ If we are to understand spirit, we must begin to understand Hegel’s concept of recognition (*Anerkennung*). It is a most central and important concept. In the Preface to the *Phenomenology of Spirit*, Hegel wrote:

[O]urs is a birth-time and a period of transition to a new era. Spirit has broken with the world it has hitherto inhabited and imagined, and is of a mind to submerge it in the past. . . . Spirit is indeed never at rest but always engaged in moving forward. . . . Spirit in its formation matures slowly and quietly into its new shape, dissolving bit by bit the structure of its previous world. . . . But this new world is no more a complete actuality [*Wirklichkeit*] than is a new-born child; it is essential to bear this in mind. It comes on the scene for the first time in its immediacy or its Notion [*Begriff*].⁴⁵

And, in Hegel's opinion, it is philosophy's task to grasp this *Begriff*. In his concluding lecture on phenomenology of 1806, Hegel writes:

This, Gentlemen, is speculative philosophy as far as I have been able to construct it. Look upon it as the beginnings of the philosophy which you will carry forward. We find ourselves in an important epoch in world history, in a ferment, when spirit has taken a leap forward, where it has sloughed off its old form and is acquiring a new one. . . . The chief task of philosophy is to welcome it and grant it recognition. . . .⁴⁶

In the *Philosophy of Right*, it is philosophy's task to recognize the Idea of right and to actualize it.⁴⁷ Indeed, the "disposition and activity of our age and every age is to apprehend the science that exists, to make it our own, and just in that process, to develop it further and to raise it to a higher level."⁴⁸

No one has done more or better work on Hegel's concept of recognition than R. R. Williams. He argues that right is constituted through recognition.⁴⁹ Many commentators who discuss Hegel's concept of recognition think that Hegel needs a specific sort of recognition: free, uncoerced, mutual recognition between equals. Why this is so first emerges in the master-slave dialectic of the *Phenomenology*. There the only recognition available to the master was from the slave. But what kind of recognition can one get from a slave? What kind of recognition can the master get from a nobody—a nothing? It was, of course, the master who made the slave a nothing. And the only recognition the master can then get from that nothing would amount to nothing. The slave, on the other hand, is at least recognized by a *master*.⁵⁰ The lesson to be drawn from this, many commentators think, is that what we need is free, uncoerced, mutual recognition between equals.⁵¹ That, however, is not Hegel's view. It is not that mutual recognition between equals has no place or is not valuable, but it is the case that it is not enough to solve our problems. Hegel's view can be summed up, I think, by saying that the more important the recognizer, the more valuable the recognition and the more real the recognized. If you wish to be recognized as a serious Hegel scholar, from whom do you want that recognition? The kids who hang out on the corner? The shopkeeper across the street? Your spouse? The Dean of your college? Or the best Hegel scholars?

Recognition of your scholarly abilities from those who know nothing about Hegel scholarship is worth little. Recognition from your equals is valuable, but not enough. Your spouse may love you deeply, and that is of real significance. But when you present your next paper at the Hegel conference, it does you little good. What you want is recognition from the best and most important Hegel scholars. That can give your scholarship solid, lasting, objective, *real* recognition.

One of the issues involved here, as Cortella aptly puts it, is that

being recognized by another means simultaneously recognizing this other. I can ‘feel’ myself recognized only by someone I consider ‘worthy’ to recognize me. This explains the *reciprocal nature of recognizing*. I cannot be recognized unless I recognize in my turn.⁵²

Besides the reciprocity necessarily involved in recognizing, the other crucial issue involved here, which has already been mentioned, is that we need a recognizer of importance—such that its recognition is of sufficient value to makes us real. We will see eventually that Hegel wants a modern constitutional monarchy. He wants Germany to move beyond feudalism and to do so without depending on an absolute monarch, as did France. Moreover, Hegel wants a constitutional monarch, I think we can say, not because it would possess less, but because it would possess greater, authority than an absolute monarch. A constitutional monarch, in Hegel’s view, would have a higher legitimacy and a higher right. Consequently, the recognition that a subject could get back from such a monarch (as property holder, marriage partner, citizen, and so forth) would be more solid and real than the recognition that could come from an absolute monarch like that of France—which, Hegel suggests in the *Phenomenology*, depended upon the base flattery of its subjects.⁵³ Such a monarch dependent upon a base form of recognition for its authority could not in turn confer real and significant recognition upon its subjects—and, indeed, was soon to collapse in the French Revolution. A modern rational state, which Hegel thinks must be a constitutional monarchy, can confer the sort of recognition that citizens need in order to be significant and real.

Perhaps this is most easily seen if we begin with the example, found in the *Phenomenology*, of Noble Consciousness. What sort of monarch

would the nobility prefer to serve? An insignificant monarch of an inconsequential backwater? Or the greatest monarch of all time—Louis XIV of France? Which would make the noble more significant? Or would being a citizen of the most rational, modern, constitutional monarchy make one more significant? Hegel quite clearly thinks the latter. It is true that such a state will involve mutual recognition between the citizens themselves, and that is quite important. But that will not, in Hegel's view, replace the recognition we need from an authority that is higher, more important, and more significant than we are. It is true that it is reason that makes that authority higher, more important, and more significant. It is also true that it is *our* own reason that does so. It is thus true that this authority depends upon *our* recognition. Still, for Hegel, we cannot dispense with a higher, more important, and more significant authority.

To see why that is so, we might approach the matter in another way. Hegel has no objection to mutual recognition between equals, he just does not think equality is usually understood correctly. Hegel thinks that the claim that all "men are by nature equal" confuses, as he puts it, the "natural" with the "concept." He thinks that by *nature* all are *not* equal. He thinks that the fact that persons are "recognized and legally regarded as persons . . . is . . . only a result and product of the consciousness of the deepest principle of [*Geistes*], and of the universality and expansion of this consciousness."⁵⁴ In other words, the fact that there are equal persons in the modern state that could mutually recognize each other is due to the fact that we have a state in which the consciousness of such equal persons has developed and in which they are recognized as such. In short, their equality is dependent upon and derivative from their development in, and the recognition conferred by, the higher and more important reality of the state.⁵⁵

Freedom

We are now in a position to introduce Hegel's concept of freedom. The essence of spirit, for Hegel, is freedom.⁵⁶ A people embodies its spirit in its laws, practices, customs, institutions—its whole world. As this realized spirit is recognized by a people, it animates their will, passion, activity, and drive. Spirit, for Hegel, is self-determining. The will, desires, and

aspirations of a people determine their action not toward something external and heteronomous, but toward their own aims, their own Idea, their own spirit. Hegel accepts the Kantian notion that freedom means obeying rational, universal, self-given laws—that is, “self-given” in the sense of “spirit-given” laws.⁵⁷ For Kant, I am only subject to laws of which I am the author and to which I subject myself.⁵⁸ But, as Pippin points out, such legislation is not limited to a single moment—it is gradual and historical.⁵⁹ For Hegel, it is part of the spirit that I construct and that constructs me.

Spirit is freedom in that spirit dissolves heteronomy. I confront nothing other or alien. All is my own. I am at home.⁶⁰ Nothing outside determines spirit. Spirit does not find anything outside itself. Any other is within spirit. It is not independent, an obstacle, a restriction. In the *Philosophy of History*, Hegel writes:

[I]n Thought, Self moves within the limits of its own sphere; that with which it is occupied—its objects are as absolutely present to it. . . . This is utter and absolute Freedom, for the pure Ego . . . is with itself alone [is not involved with any alien principle]; thus that which is diverse from itself, sensuous or spiritual, no longer presents an object of dread, for in contemplating such diversity it is inwardly free and can freely confront it. . . . Man is not free, when he is not thinking; for except when thus engaged he sustains a relation to the world around him as to another, an alien form of being. This comprehension—the penetration of the Ego into and beyond other forms of being with the most profound self-certainty [the identity of subjective and objective Reason being recognized], directly involves the harmonization of Being: for it must be observed that the unity of Thought with its Object is already *implicitly* present . . . for Reason is the substantial basis of Consciousness as well as of the External and Natural. Thus that which presents itself as the Object of Thought is no longer an absolutely distinct form of existence. . . .⁶¹

What should be clear from this passage is that the principle of spirit's freedom is the same as the principle of idealism. As we have seen:

Every activity of [*Geistes*] is nothing but a distinct mode of reducing what is external to the inwardness which [*Geist*] itself is, and it is only by this reduction, by this idealization or assimilation, of what is external that it becomes and is [*Geist*]. . . .⁶²

Hegel also writes:

I comport myself idealistically; I look at something and it is independent over and against me, but this whole representation [of independence] is mine; I am the bearer of it, and the object's independence is ideal. . . .

The fundamental determination of spirit is freedom; in freedom everything is posited as ideal.⁶³

As we have also seen, "An out-and-out Other simply does not exist for [*Geist*]."⁶⁴ Moreover, "everything which I am to recognize . . . has the task of becoming mine. . . . Such is the infinite greed of subjectivity, which collects and consumes everything within this simple source of the pure 'I.'"⁶⁵

Freedom means self-determination, for Kant as well as for Hegel, but for Hegel this must be understood as the self-determination of spirit. Nothing outside of spirit determines it. *Geist* pulls everything it confronts into itself—it idealizes it. It eliminates its alienness. We can understand this best, perhaps, if we look at culture. In culture we construct things as our own. We transfigure what might otherwise be alien or heteronomous into our own self-expression—and thus into a form of self-determination. There is a fundamental sense in which we are at home in our culture, and a fundamental sense in which culture makes freedom possible.

Consider a practice that might look like the opposite, say, the practice of bowing. Some might find such a practice subservient. They might think it a result of domination, and thus anything but an expression of freedom. But if bowing is part of our culture, if it is part of our identity, it may not imply subservience at all. We may even take pride in the way we bow. It can be a form of self-expression—indicating respect for the individual to whom we bow and commanding respect for the grace, dignity, and elegance with which we bow. Moreover, even if the outer form indicates deference to a superior, a bow that is not sufficiently deep will transform that deference into subtle contempt. On the other hand,

a bow that is too deep may ironically subvert the other's superiority. To think that the bow of a *samurai*, the moment before he pulls his sword on you, implies any subservience, is simply to miss the reality of culture.⁶⁶

If we are at home in our culture, if it is one with us in essence, then it is not really other—not heteronomous. It has been constructed by us, and we by it. In so far, then, as it affects us, influences us, molds us, this is not a coercion from outside. It takes place within our spirit. It is a self-coercion—a self-determination. There is a fundamental sense in which we are free, only free, within our own culture, where practices are our own.

Identification with the central institutions of one's culture is a necessary dimension of freedom, but it alone is definitely not enough to make us free. After all, dominated individuals and subordinates of many sorts can be found in all cultures—and may even identify with their allotted role as much as anyone else in that culture. Such oppression must be overcome. But if it is, then culture can contribute significantly to making real freedom possible. It can allow us to be at home—it can eliminate otherness and heteronomy.

We might sum this up by using Wood's formulation, "Freedom is always *Beisichselbstsein in einem Andern*, 'being with oneself in an other.'"⁶⁷ In the *Philosophy of Right*, freedom as being with oneself will be taken up at increasingly complex levels. Each step will involve an idealization such that I am with myself in all that is other—and thus am free. The social, cultural, political, and religious world, indeed, all of reality, must appear as *mine*.

In the *Philosophy of Right*, *Beisichselbstsein*, freedom as being with oneself, I will argue, is taken up at four increasingly complex levels.⁶⁸ And each level involves a higher expression of freedom.

At the first level, freedom involves the ability of consciousness to abstract from everything external, withdraw from the world, and turn into itself.⁶⁹ Thus, in the simplest way, thought faces no obstacles or obstructions—nothing other. It is alone with itself. It is this form of *Beisichselbstsein* that characterizes "Part One" of the *Philosophy of Right*, which deals with Abstract Right, and which we will discuss in chapter 2.

Second, freedom as *Beisichselbstsein* requires that our actions be rationally self-directed. We must be directed by our *own* reason, and not toward an external end, but toward the rational itself. Such rational self-direction takes the form of law. If you are not free, you cannot give yourself laws. If you can give yourself laws, you are free. Only a

will that obeys universal rational law is free, because it obeys itself.⁷⁰ Hegel explores this Kantian dimension of freedom as *Beisichselbstsein*, and especially its limitations, in “Part Two” of the *Philosophy of Right*, which deals with *Moralität* (Morality), and which we will discuss in chapter 3.

Third, we must come to see that such Kantian freedom is not enough. For Kant, individuals are free when practical reason determines their action. The individual, however, is not necessarily free to realize this action. The objective world may well present obstacles to the carrying out of the action, without, for Kant, affecting the moral freedom of the individual in the least. For Kant, such empirical factors, whether they be obstacles or aids, are irrelevant to moral freedom. Nor do feelings or inclinations have a role here. They need not support the action for it to be moral or free; nor is our freedom affected if our feelings are opposed to the moral action.⁷¹

For Hegel, on the other hand, freedom is realized only when the objective external world and our feelings fit, agree with, and support the rational freedom of the individual. Laws and institutions, feelings and customs, as well as the rationality of the individual must be seen as a single spiritual unity. Reason must be concretized in our laws, institutions, customs, traditions, and practices so that our feelings, attitudes, and interests, as well as our habits, character, and disposition, and thus our actions, will actually be formed in accordance with reason. Social reality must be constructed in accordance with reason and reinforce the rational behavior of individual subjects.

Thus consciousness would be free, would achieve *Beisichselbstsein*, not just when withdrawn into abstraction. It could also achieve *Beisichselbstsein* in the world, which would no longer be heteronomous or other, but our own—a world essentially at one with reason. Reason could find itself in this world. It could find its world no longer an obstacle to reason but rather an arena laid out for its operation. The world must have been shaped by rational law, such that the rational action of individual subjects does not meet obstacles or impediments. Reason must be at home in a world that is its own. In obeying civil laws, we must be obeying the laws of our own reason. Freedom means facing the world and not finding it other. Subjective reason grasps objective reason and is at one with itself.

We find this much more complex form of freedom as *Beisichselbstsein* laid out in the long “Part Three” of the *Philosophy of Right*, which deals

with *Sittlichkeit* (Ethical Life). We must be rooted in a web of cultural institutions, practices, customs, and traditions that involve concrete feelings, inclinations, family ties, socioeconomic relations, political associations, and so forth. None of this will be other or heteronomous—it is our own. Indeed, that is the very meaning of *Sittlichkeit*, as we shall see. We will discuss these matters in chapters 4 and 5.

It should be noticed that we are saying the same thing here that we said about spirit, just with more specificity and detail. Spirit is nothing but our doing and we are nothing but its doing. We form it and it forms us. Spirit is quintessentially freedom as *Beisichselbstsein*. Our spirit allows us to be with ourselves in all other.

At the fourth level, however, even this is not sufficient. It is not sufficient that we just act in accordance with the laws, customs, and traditions of our nation. It is an accident that we were born in a particular nation. It is not enough even that our laws agree with reason. We need a deeper ground than this. We need to know that our laws are absolutely right. I do not want to live in a state where all I can say is that this is the way our laws happen to have developed, and have to admit that they might not have. I need to know that I live in a state that developed in accord with the absolute. The absolute is necessary to give us this highest sense of right. This will have to be explained as we proceed.

The absolute also gives us the highest freedom as *Beisichselbstsein*—we confront no other that is not our own. This will become clearer as we approach the very end of the *Philosophy of Right*, which we will discuss in chapter 6. There we get beyond all the earlier sections that were abstracted out from actual concrete reality. There we rise to the actual historical world and absolute right emerges conceptually for us. There we will get a reciprocal determining, interconnection, and recognition between (a) the subjectivity of the citizens, (b) rational, objective, institutionalized laws, and (c) the absolute or God. The citizens' behavior is not just subjective and whimsical—it is not even just subjectively rational. It is molded by and accords with *objectively* rational public institutions. And the laws and institutions of society are not just the way our society happens to do things. They are absolutely rational—the actualization of the absolute.⁷²

This fit between us and the world and the absolute is crucial. Hegel will not accept the Kantian notion that we are free just because

we act rationally, have rational intentions, and where consequences, results in the world, do not matter. Freedom requires a fit between a rational subject and a rational world—a two-way fit—where the world is rational such that our rational action will fit with it, have effect in it, and not meet obstacles, frustration, failure. We and our world have to be molded to fit each other so that we can succeed in acting in it, achieve results and purposes, and act rationally in doing so. And there must be a fit in the sense that the world will reinforce us. We do not just act on personal rational views. We act in accordance with rational laws and institutions. They reinforce us, recognize us, mold us, and make our personal action objective. And this is not just the way people in our society happen to act. This is all the realization of the Idea, the absolute, God. It is absolutely objective. This is Freedom. Anything less than this will obstruct rational action and frustrate freedom. This will have to be shown as we proceed.

For Hegel, *Moralität* and *Sittlichkeit* are to be distinguished.⁷³ *Moralität* is morality that is rational and reflective. Reason decides what is moral, and one acts *because* reason tells them it is the right thing to do. For Hegel, *Moralität* starts with Socrates,⁷⁴ and achieves its high point in Kant. *Sittlichkeit*, on the other hand, is found especially in the Greek *polis* before the development of Socratic *Moralität*.⁷⁵ It is ethical behavior based on custom and tradition. It is developed through imitation and habit in agreement with the practices and laws of the community. *Sittlichkeit* is ethical life built into one's character, disposition, and feelings.⁷⁶

Hegel thinks the *Sittlichkeit* of the ancient *polis* inadequate to the modern world. It broke down in the face of rising individuality. While it is the case that individuality and *Moralität* are desirable for Hegel, and should have a place, nevertheless they go too far in the French Revolution, *laissez-faire* economics, and Kantian ethics. We need a higher *Sittlichkeit* that transcends the destructiveness of modern *Moralität* by joining the undeveloped *Sittlichkeit* of the ancient world with the rational reflection and individuality of *Moralität*.

What Hegel wants for the modern world, we will see as we proceed, is neither traditional *Sittlichkeit* nor modern *Moralität*. He wants a fusion of *Sittlichkeit* and *Moralität*. This higher *Sittlichkeit* is rational reflective morality that actually exists as concretely rooted in the customs, traditions, laws, character, practices, and feelings of a people.

Right

In introducing Hegel's concept of freedom, we have already slipped into talking about right. We must now focus explicitly on right and begin to explain its relation to freedom. Hegel tells us simply that right is freedom,⁷⁷ that freedom "constitutes the substance and determination of right."⁷⁸ After all, if we are to be free in any full or significant sense, we must act *rightly*. We cannot be free if we act falsely or wrongly. Our actions must be right and we must see them as right. Nor is it sufficient that we act unfreely or unconsciously in performing an action that merely accords with right—that is not *acting rightly*.

Perhaps the connection between freedom and right can be seen more convincingly if we remember that *Recht* can mean either right or law. And the ground of law is certainly freedom. Hegel says that law without freedom is meaningless.⁷⁹ If you are unfree, you cannot give yourself laws. To give yourself laws, you must be free.

Some might object that freedom should be understood to mean doing whatever one wants, whether it is right or wrong. Hegel stands in a tradition going back at least to Augustine that holds that there are two important dimensions to freedom. The first is that, indeed, we *are* free to choose between this or that, and thus that we *are* free to choose either what is right or wrong. But this alone is a rather trivial form of freedom, because if we consistently choose what is wrong we can end up losing our freedom. For the Christian tradition, we are free at any moment to choose to sin, but if we consistently choose to sin, we end up in hell, where we would hardly be free. To take a secular example: at each moment one is free to choose whether or not to drink the glass of whiskey. If one chooses to drink the whiskey too often, one will no longer be free to choose whether or not to drink the whiskey. To be free in this more significant sense you must freely choose what is right.

For Hegel, as we have seen, a people constructs its spirit, that is, its highest values, truths, aspirations, and meaning. Through its historical activity this people embeds its spirit in its laws, institutions, practices, ethics, philosophy, religion, and so forth. Right simply is the embodiment of this spirit in concrete institutions, practices, and laws. Right is the expression of our spirit, which is to say that it is the expression of our freedom.⁸⁰

Moreover, this development of right in and through spirit will give us what *actually* is right. To explain how we can be sure that freedom will give us right will require the whole of this book. It is a claim that will become plausible only at the end of the *Philosophy of Right*, where we have relations between states, conflict, war, and tragedy. It is Hegel's view that out of this emerges a higher right. It is not possible to make a convincing case for that at this point. What we can do is begin to introduce the matter and bring it into focus.

It is clear that for Hegel the state is our construction, as are our laws and institutions. It is also clear that spirit is our construction, as is our Idea. Even God is our construction. What about right? Subjectively we may think our laws, our state, and our God are right. But they cannot be right just because we say so, or because our culture thinks so, or because our God has proclaimed them such. That may make them right *for us*. But we need a great deal more than that. We need an objective right—indeed, we need an *absolute* right. But if it is constructed, how can it be absolutely right?

Ultimately, the answer will be that philosophy is able to see that reason is embedded in the state as well as in our laws, values, institutions, and practices. And reason is an authority—our ultimate authority. It is not something rational beings can disagree with. Reason, after all, is not something other. It is our own. To disagree with it would be to contradict ourselves. Reason in the state is our own reason. Thus, as our reason finds reason embedded in its world, it faces an absolute authority—or, rather, it is that authority.

This is not to say that the state is always right and cannot be opposed. That is not Hegel's view. His understanding of the Stoics and of Socrates is that they did precisely that—they withdrew from the spirit of their time and opposed it.⁸¹ Hegel wants us to see, though, that world spirit is capable of moving beyond us and establishing, say, that slavery is absolutely wrong. It may also, to take a current example, establish that same-sex marriage is absolutely right. If so, then no matter how deep your personal belief that slavery is justified or same-sex marriage unjustified, you will just be pushed aside by world spirit. In Hegel's view, if we are to be free, we need to be able to know and feel that we are right in this absolute sense. We need to know that right has been actualized—that it has seized the world and established itself.

On the other hand, it is certainly possible that you may have an insight into right that the world historical nation of your era lacks, and

that it will not admit that it lacks, say, to take another current example, that capital punishment is not right. And so, if you have grasped what actually is right, this Idea would have to be actualized within our spirit, if we are to be free.

Hegel's views here might helpfully be compared to those of the natural law tradition. For Aquinas, the natural world is rational. This is so because God created nature and embedded rationality in it. This rationality takes the form of natural law as well as of human law, which should accord with each other.⁸² This might be contrasted to the views of someone like Epicurus, for whom human law and justice amount to no more than what human beings agree upon.⁸³ Law and justice have no deeper ontological foundation.

Hegel and Epicurus agree that we construct our own laws, justice, and right. But Hegel does not agree that they have no deeper ontological ground—that they are merely contingent agreements. Hegel's views in this respect are closer to those of Aquinas, except that Hegel will not accept the metaphysics of Aquinas. He does not accept a transcendent God who imposes rational law from above and outside. Hegel thinks that human reason constructs its own right (as for Epicurus), but that this construction is not carried out by individuals *as* individuals. It is carried out by spirit—by the absolute. It thus, for Hegel, has an ontological depth, as for Aquinas, but it brings in no transcendent other. Absolute spirit is us, our reason, operating in world history through our state, our religion, and our institutions, which we have constructed, but which also construct us. Right is as much our own as for Epicurus, but is also absolute as for Aquinas.

For this to appear plausible, however, a *great* deal more will have to be said. The claim that right is established by our spirit is not going to be sufficient to convince us that what we take to be right is objectively right—let alone *absolutely* right. To show that, in Hegel's view, we must show that historical conflict over time will eliminate whatever is less than universal and rational—less than absolutely right. We find this view encapsulated in Hegel's famous notion of the cunning of reason:

Particular interests contend with one another, and some are destroyed in the process. But it is from this very conflict and destruction of particular things that the universal emerges, and it remains unscathed itself. For it is not the universal Idea which enters into opposition, conflict, and danger; it

keeps itself in the background, untouched and unharmed, and sends forth the particular interests of passion to fight and wear themselves out in its stead. It is what we may call the cunning of reason that it sets the passions to work in its service. . . .⁸⁴

Hegel's model for the cunning of reason is taken from Kant's philosophy of history,⁸⁵ where Kant explains how a common good (for Kant, peace, a league of nations, and international law) can result from conflicting particular interests that do not consciously seek that good, but simply their own particular ends. Nevertheless, the pursuit of particular interests (together with the resulting conflict between them) leads to a common good—what right would have demanded from the start. Between nations, this conflict takes the form of war. But given the commercial concerns of nations, such conflict will force intervention, compromise, eventually a league of nations, international law, and peace—exactly what right would have demanded in the first place.

Peace, a league of nations, and international law are *not* the goal for Hegel. Periods of happiness (periods of peace without conflict), he says, are blank pages in history.⁸⁶ Nothing happens—there is no development. Hegel also says that history is the altar on which the happiness of nations is slaughtered.⁸⁷ But short of this, the conflict of particular interests does, for Hegel, drive us toward the universal and rational—toward right. There is a cunning of reason at work in history.

How do the laws of states historically become more universal and rational? They do so in two ways: first, the scope of the law becomes more extensive and universal, and, second, the laws come to be more deeply rooted in reason—they come to be more rational.

The scope of laws becomes more universal in the sense that the range over which a law extends becomes greater and greater. To take one of Hegel's examples, in early history we find the principle of revenge.⁸⁸ If someone kills a member of your clan, you have an obligation to retaliate, such that the scope of the principle, "thou shalt not kill," is no larger than the clan. You do not kill anyone in your clan, but you can be obliged to kill outsiders who harm the clan. You do not treat outsiders in the same way as clan members.

Later, the scope of the law may be as large as a city or a religious faith. In the modern world, after the French Revolution, Hegel holds, the scope of any law is nationwide such that all citizens are to be treated

in the same way. For Kant, the law should become international. One wonders whether Hegel is not driven toward this also—but he definitely resists it.⁸⁹ At any rate, the scope of law increases and becomes more universal. Why? Because conflict inevitably arises when the scope of a law is less than universal. If you take your revenge, that simply forces the other side to take its revenge. That then forces you to take your revenge again. And this could go on forever. Anything short of the universal, anything that does not apply equally to all, will sooner or later produce conflict and will sooner or later drive us to extend the law—universalize it—to avoid the conflict. We will be driven on toward the universal, the rational, the right. That is the basis of Kant's philosophy of history and Hegel takes it over from him and develops it.⁹⁰

Second, laws and institutions in early history are based predominantly on unreflective custom and tradition. As conflict drives us toward the universal, law comes to be more and more rational, and custom becomes subordinate. After the *Declaration of the Rights of Man and of the Citizen* in the French Revolution, as well as in Kantian morality, all law and authority has its ground in reason. You obey the law because it is rational. You would act irrationally if you disobeyed it. If you ask why you should obey the law, earlier it would be because custom, authority, the will of God, or something of that sort demanded it. In the modern world, the answer is that you obey the law because it is rational. Only thus is it right. And only thus are you free.

Right therefore is tested by history. Right claims to be right, indeed, it claims to be absolutely right. It would not be a claim made by reason if it were not a claim to universality. And any such claim to universality will throw into relief anything we have ignored, excluded, or marginalized—any group that we have not included in our universal. And such exclusion will sooner or later spark objections, protest, conflict—which would undermine our claim to absolute right. And to have our claim undermined would push us on further to establish a right that is universal and absolute.

This is not to say that world spirit is always right and that we can never go against it. Even in Hegel's opinion, we have seen, Socrates and the Stoics rejected the spirit of their age. They turned within to escape from a corrupt world.⁹¹ It is to say, though, that world spirit is continuously pushed to meaningfully and rightfully go beyond existing conceptions of right and make, to take just one example, the holding of slaves absolutely wrong. At that point, no matter how deeply we may

feel that slavery is right, we will just be pushed aside by history. We need this sort of absolute right if we are to be free. We need to know not just what is right, but that right has been actualized, that it has swept the world and established itself, such that our rightful action in the world will not meet obstacles and frustration.

Here we might wonder why Hegel can accept the higher right of world history, but cannot accept a league of nations. We will be in a position to explain this shortly.

If world spirit can produce higher and higher right through a historical process of conflict that sorts out what is less than right, if it can tell us that slavery is wrong, and even more so if we were to decide that it could tell us that, say, same-sex marriage is right, or eventually that capital punishment is wrong, if world history could do this, then, certainly, the doctrine of an end of history, with which Hegel is often saddled, would seem untenable.

End of History

Kojève, Bloom, and especially Fukuyama push to the extreme the doctrine of an end of history.⁹² Bloom seems to agree with Kojève that for Hegel, “history is completed, . . . nothing really new can again happen in the world.”⁹³ For Fukuyama, Hegel thought history would end when “mankind had achieved a form of society that satisfied its deepest and most fundamental longings.” For Hegel this is supposed to have occurred in modern liberal society, “where there would be no further progress in the development of underlying principles and institutions, because all of the really big questions had been settled.”⁹⁴ Modern liberal society is supposed to be a society that can “not be improved upon.”⁹⁵ In it we have the “universalization of Western liberal democracy as the final form of human government.”⁹⁶ We have “an unabashed victory of economic and political liberalism,” the “triumph of the West. . . .”⁹⁷

Fukuyama claims that even Marx believed in an end of history.⁹⁸ Actually, though, Marx believed in the end of *prehistory*, “The prehistory of human society . . . closes with” bourgeois society.⁹⁹ Socialist society, for Marx, would be the *beginning* of history proper. Furthermore, it is quite clear that Marx did not even think that Hegel believed in an end of history. In the Afterword to the Second German Edition of *Capital*, Marx claims that Hegel’s dialectic was an abomination to

bourgeois society because it included in its understanding of the existing state of things,

at the same time also, the recognition of the negation of that state of things, . . . of its inevitable breaking up; because it regards every historically developed social form as in fluid movement, and therefore takes into account its transient nature not less than its momentary existence. . . .¹⁰⁰

In Fukuyama we find an ideological triumphalism intent on claiming that modern liberalism will last forever. In Marx we get the very opposite, that Hegel's thought is found threatening because it implies the inescapable demise of bourgeois society.

While both of these thinkers, without doubt, are using Hegel to serve their own ends, Marx comes closer to being correct about Hegel than does Fukuyama. There is little evidence to support the Kojève-Bloom-Fukuyama thesis of an end to history. This bizarre interpretation arises, I suspect, from misinterpretations of things that Hegel does say. In the Introduction to the *Philosophy of History*, Hegel distinguishes stages of history: "firstly, that of the Orientals, who knew only that One is free, then that of the Greek and Roman world, which knew that Some are free, and finally, our own knowledge that All men as such are free, and that man is by nature free. . . ."¹⁰¹ This seems to suggest that our era is the final and ultimate of these stages. Hegel, at times, even identifies this stage with the realization of God or the absolute.¹⁰² Furthermore, at the end of the Preface to the *Philosophy of Right*, Hegel seems to suggest that philosophy cannot improve the world:

A further word on the subject of *issuing instructions* on how the world ought to be: philosophy, at any rate, always comes too late to perform this function. As the *thought* of the world, it appears only at a time when actuality has gone through its formative process and attained its completed state. . . . When philosophy paints its grey in grey, a shape of life has grown old and it cannot be rejuvenated, but only recognized [*erkennt*], by the grey in grey of philosophy; the owl of Minerva begins its flight only with the onset of dusk.¹⁰³

And Hegel does say in the Introduction to the *Philosophy of History*:

World history travels from east to west; for Europe is the absolute end of history, just as Asia is the beginning. World history has an absolute east, although the term east in itself is wholly relative; for although the earth is a sphere, history does not move in a circle around it. . . .¹⁰⁴

I do not think one can legitimately interpret these passages as holding that history has come to an end in the sense that no significant change is possible in the future. To foist such an interpretation on Hegel would call for much more evidence than is ever given.

After all, for Hegel, “spirit never stands still.” It is “never at rest but always engaged in moving forward.” Moreover, “spirit is immortal; there is no past or future time at which it did not exist or would not exist; it is not over and done with. . . .” While spirit never comes to an end, never stops changing, at the same time, any particular nation, any national spirit, our national spirit, *will* come to an end. It “blossoms, grows strong, then fades away and dies. It lies in the nature of finite things that any limited spirit is ephemeral.”¹⁰⁵ For Hegel, a “nation dominates the world” but then is delivered “over to its chance and doom.”¹⁰⁶ As he puts it elsewhere, “we can apply the words of the Apostle Paul to Ananias: ‘See the feet of those who will carry thee out are already at the door.’”¹⁰⁷ Even more pointedly, Hegel writes, there “is a higher law that any people from which the world receives a new and universal impulse must itself finally perish before all the others, while its principle—though not the people itself—survives.”¹⁰⁸

Moreover, it is quite clear that the notion of a cessation of history never occurred to Hegel. In the Introduction to the *Philosophy of History*, he himself speaks of future history:

America is . . . the country of the future, and its world-historical importance has yet to be revealed in the ages which lie ahead—perhaps in a conflict between North and South America. . . . It is up to America to abandon the ground on which world history has hitherto been enacted.¹⁰⁹

Indeed, Hegel holds in general that “what is better lies ahead. . . .”¹¹⁰ Furthermore, after the Preface, the *Philosophy of Right* itself goes on to set out a state that certainly did not yet exist in the Germany of Hegel’s era, certainly not in the ideal form given to it in the *Philosophy of Right*.

Wood argues that the state set out in the *Philosophy of Right* closely resembles Prussia, not as it was, but as it was intended to become

under the reform ministry led by Chancellor Karl August von Hardenberg, with the advice of Interior Minister Wilhelm von Humboldt. . . . They would have converted Prussia from an absolute monarchy into a constitutional monarchy . . . and would have established a bicameral estates assembly, with an upper house drawn from the hereditary nobility, and a lower house comprised of representatives drawn from municipal and professional corporations. . . .¹¹¹

The groundwork for the reforms of Hardenberg and Humboldt were laid earlier in the century by vom Stein. Avineri argues that Prussia's defeat by Napoleon at the Battle of Jena in 1806, welcomed by Hegel, "paved the way for the reforms inaugurated by vom Stein and for the emergence of a modernized and liberalized Prussian state."¹¹² This reform movement was halted after 1815 and the plans of Hardenberg and Humboldt for a national assembly were ultimately rejected by the King in 1821.

Besides an estates assembly and a constitutional monarch, the *Philosophy of Right* describes several other institutions that did not exist in the Prussia of Hegel's day: a civil service, public trials, and trial by jury.¹¹³

If, despite all this, we were somehow still persuaded that Hegel believes in an end of history, we would then want to ask *when* Hegel thinks history is supposed to end—at what point are we supposed to reach that historical stage where nothing really new can any longer happen? Did we reach it in 1806 after Prussia's defeat at the Battle of Jena, as Kojève and Fukuyama suggest?¹¹⁴ That would make no sense if the state described in the *Philosophy of Right* embodies the reforms of Hardenberg and Humboldt, reforms that had not at all been realized even in 1821 when Hegel published the *Philosophy of Right*. Well then, perhaps history is supposed to end when the state envisioned in the *Philosophy of Right* is finally realized? But that forgets that Hegel expects America to be the land of the future, whose "world-historical importance has yet to be revealed," the America that will "abandon the ground on which world history has hitherto been enacted." Well, then, perhaps *that* is when history will end? Or does Hegel still foresee future conflict between North America and South America that will bring significant further change?

How about after the fall of the Soviet Union? Or the defeat of ISIS? The “end of history” crowd could just keep moving the goalposts on us. Indeed, at one point Fukuyama even seems to back off from claiming that Hegel actually held any of this nonsense. He speaks instead of a “new, synthetic philosopher named Hegel-Kojève,” and Fukuyama claims now to be more interested in the idea of an end of history itself than in the philosophers who originally articulated the idea.¹¹⁵ It seems to me that what we end up with in Fukuyama is an ideological triumphalism intent on claiming that modern liberalism will last forever.

There is another set of passages in the Preface to the *Philosophy of Right* that raise an even more serious problem for the view I am opposing. Hegel discusses philosophy’s capabilities vis-à-vis the present and the future. He claims that

philosophy is *exploration of the rational*, it is for that very reason the *comprehension of the present and the actual*, not the setting up of a *world beyond* which exists God knows where—or rather, of which we can very well say that we know where it exists, namely in the errors of a one-sided and empty ratiocination.¹¹⁶

A bit later, he adds that philosophy does not aim

at instructing the state on how it ought to be, but rather at showing how the state, as the ethical universe, should be recognized [*erkannt*]. . . . [E]ach individual is in any case a *child of his time*; thus philosophy, too, is *its own time comprehended in thoughts*. It is just as foolish to imagine that any philosophy can transcend its contemporary world as that an individual can overleap his own time or leap over Rhodes. If his theory does indeed transcend his own time, if it builds a world *as it ought to be*, then it certainly has an existence, but only within his opinions. . . .¹¹⁷

Hegel also gives us an example of a classical text that does what he wants, that recognizes the actual and does not try to set up a beyond for the future, but his choice of text is rather surprising. Hegel picks a text that one might think was a paradigm attempt to overleap its own time and build a world as it ought to be, and thus which would only

exist in the author's opinions. He picks Plato's *Republic*. While Hegel considers the society described in the *Republic* to be "an empty ideal," that, however, is not what he finds most important about it:

[E]ven Plato's *Republic*, a proverbial example of an *empty ideal*, is essentially the embodiment of nothing other than the nature of Greek ethics [*Sittlichkeit*]; and Plato, aware that the ethics of his time were being penetrated by a deeper principle which, within this context, could appear immediately only as an as yet unsatisfied longing and hence only as a destructive force, was obliged, in order to counteract it, to seek the help of that very longing itself. . . . But he proved his greatness of spirit by the fact that the very principle on which the distinctive character of his Idea turns is the pivot on which the impending world revolution turned.¹¹⁸

If the relationship of Plato's *Republic* to the future of Greek life is not objectionable, how then are we to understand the relationship of philosophy to the future that Hegel does find objectionable? While Hegel clearly and explicitly warns us that philosophy cannot issue *oughts* or set up a *beyond*, he does not seem to be holding that philosophy can play no role at all in future change. It is clear that he thinks philosophy is incapable of, and should refrain from, spinning subjective opinions or expressing subjective hopes and wishes about the future. What philosophy should do, on the other hand, is to comprehend its age, apprehend reason in the actual world, and in doing so it can accord with the "impending world revolution" of its time. That is what Hegel thinks Plato did. Plato was able to recognize and thus to help realize the new principle that was becoming actual in his age, despite the fact that his goal was to counteract it. Hegel is suggesting that philosophy, if it attends to what is *actual*, as opposed to subjective opinion, can anticipate the future and help realize it. If this is a correct reading of Hegel, then, far from being committed to an end of history, Hegel thinks philosophy can help realize the future—and, indeed, he thinks this of his *own* time. In a passage from the *Phenomenology of Spirit* quoted earlier, he writes that, "[I]t is not difficult to see that ours is a birth-time and a period of transition to a new era." He thinks that, "Spirit is indeed never at rest but always engaged in moving forward. . . ."¹¹⁹ In another passage also quoted earlier, he says:

We find ourselves in an important epoch in world history, in a ferment, when spirit has taken a leap forward, where it has sloughed off its old form and is acquiring a new one. . . . The chief task of philosophy is to welcome it and grant it recognition.¹²⁰

There is certainly no end of history doctrine here. There is the suggestion, much as with Plato, that in *recognizing* emerging spirit, philosophy helps make it real. Philosophy helps actualize the new era.

For Hegel, we must distinguish between: (1) what exists, as opposed to (2) what is actual. The actual must be recognized so that it can come to exist. If we are not to misunderstand Hegel, we must clearly understand that the actual is not to be identified with what simply exists. The actual is not what we find given in external appearance. The actual is what has been actualized in the spirit of the age. It is what is essential. It does not empirically exist yet. Actuality, Hegel tells us in the *Logic*, is the unity of essence and existence, the inner and the outer. It is inner essence developing into, on its way toward becoming, outer existence.¹²¹

Thus when Hegel, in the Preface to the *Philosophy of Right*, makes the now infamous claim that, "What is rational is actual; and what is actual is rational,"¹²² this is not to be understood as the reactionary claim that everything that exists in the state is rationally justified. The only thing that is rational and thus rationally justifiable, according to this claim, is the *actual*, that is, precisely what does *not* yet exist, what is essential, what has been actualized in spirit, actualized through a historical process of conflict that, as we have seen, sorts out what is less than right.

The reforms of Hardenberg and Humboldt, which are built into the fabric of the state described in the *Philosophy of Right*, certainly did not exist when Hegel wrote the text. Indeed, those reforms were rejected by the King in 1821, the year in which the *Philosophy of Right* was published, and never came to exist in Prussia during Hegel's lifetime. Nevertheless, we should now be able to see, incorporating them into the state of the *Philosophy of Right* cannot be seen as the expression of utopian dreaming. These reforms were *actual*. Estates assemblies, constitutional monarchs, a civil service, public trials, and trial by jury even existed in other modern states. They did not exist in Prussia, but were being actively promoted at the highest levels. They were an essential part of the spirit of the age. They had been realized in spirit through a historical process of conflict that sorts out what is less than right.

Thus, the *Philosophy of Right* not only sets out a state that does not exist in Prussia, but it sets out a state that Hegel thinks *ought* to exist in Prussia. This, however, would seem to be a problem because Hegel objects to an *ought*. He has told us that philosophy “comes too late” to issue “instructions on how the world ought to be.” Moreover, if it “builds itself a world *as it ought to be*” that world exists only within the realm of opinion, “a pliant medium in which the imagination can construct anything it pleases.”¹²³

Nevertheless, we must see that while Hegel rejects a utopian ought of the imagination, he does think, as he says, that “the actual world is as it ought to be,” and that this shows us that reason has an “absolute power [that] translates itself into reality.”¹²⁴ Also “reason is not so impotent as to yield only an ideal or a moral ought, and only outside the bounds of actuality, or who knows where—perhaps merely as something particular that exists in the heads of a few individuals.” Rather reason “is itself the activation and the bringing forth, out of inwardness into appearance, into world history . . . of the spiritual realm.”¹²⁵ This certainly sounds like there is a legitimate ought to be found at the level of the actual.

In other words, there are not just two alternatives here, either accepting an ought and ending up with a utopian flight of the imagination, on the one hand, or rejecting an ought such as to be stuck with the existing status quo, on the other. We can and *ought* to bring the actual, the essential, into existence by recognizing it. So then, the *Philosophy of Right* does not describe a state that already exists. It is not a conservative endorsement of the Prussian state, as someone like Popper would have us believe.¹²⁶ But neither is it an attempt to “leap over Rhodes” and to spin out an imaginary utopia. It attempts to comprehend the spirit of the age, to recognize what is essential in it, and to contribute toward actualizing it. Hegel does not see himself as having arrived at an end of history where nothing really new can happen. He sees himself as living in a “birth-time,” a “period of transition to a new era,” where “spirit has broken with the world it has hitherto inhabited.” And the “task of philosophy is to welcome it and grant it recognition.” That is what philosophy *ought* to do. Hegel’s task is to recognize the dawn of a new age, expressed in the proposed reforms of Hardenberg and Humboldt, and to help make them real. He wants his philosophy to accord with and assist the “impending world revolution” of its time.

The difference between these three sorts of position can be seen more clearly in Hegel’s treatment of slavery. He writes:

Slavery is unjust in and for itself, for the essence of man is freedom. . . . Slavery ought not to exist, as it is by definition unjust in and for itself. This 'ought' expresses a subjective attitude, and as such, it has no historical justification. For it is not yet backed up by the substantial ethical life of a rational state. In rational states, slavery no longer exists. . . .¹²⁷

In other words, while slavery is unjust in and for itself, nevertheless, if the abolition of slavery has not come to exist in the ethical life, the customs, traditions, and institutions of a state, there is no historical justification for wishing it away—that would just be subjective and utopian. And in Hegel's view there is no justification for that sort of ought. But, Hegel goes on further to say that before such rational states, "have come into being, the authentic Idea is present in some areas of life only as an unfulfilled obligation."¹²⁸ Here, it seems to me, we have an ought, *only* an ought, not something that in fact exists, but it does not seem to be a mere subjective and utopian ought with no historical justification. Here we have an authentic Idea present in spirit, something actual, which involves a real ought. It ought to be recognized and made real.

Thus, we need to distinguish three positions. First, what exists—the status quo, which can be endorsed in a conservative or reactionary way. Or we can triumphantly proclaim that it will never change—that we have arrived at an end of history. Second, at the opposite end of the spectrum, we can imagine utopian changes, which involve a sheer ought, philosophy trying to transcend its world and leap over Rhodes. Hegel accepts neither of these two positions—nor would Marx, for that matter. Third, for Hegel, history is continually changing. Spirit is always moving forward. For it to do this, we must recognize the actual, the Idea, the essential, and make it real. This is what we *ought* to do—and that is a perfectly legitimate ought.¹²⁹ Indeed, it is at the very heart of spirit and thus at the center of what makes us free in our world. Hegel is a progressive.

To get a feel for these three positions, we might ask ourselves how much acceptance there was or could have been in the United States for, say, same-sex marriage in 1950, in 2000, and how much will there be in 2050? In other words, what was once at best a utopian dream of a few became, in the recent past, quite actual, though not yet existent, and now is coming to exist—and may well exist even more widely in the future.

For Hegel, history is largely retrospective. We cannot overleap our own time or jump over Rhodes. We must put aside utopian opinions about the future. At any given point in history we can look back and ask how we got where we are. We can ask what sorts of developments led us to our present.

In this sense, we are *always* at the end of history. This point is made especially well by Grier.¹³⁰ If we were to ask the same question at an earlier or a later point in history, we would pick out different developments to explain how we arrived at those different points. There is no end of history, except that every point is an end of history—a point at which we look back and ask how history led us to where we are. That is what we can see. Moreover, this sort of retrospective history can allow us to comprehend the spirit of our age, to recognize what is essential in it, to recognize the emergence of the actual, and to contribute toward making it real.

Thus, for Hegel, the reforms proposed by Hardenberg and Humboldt were actual, they were part of the spirit of the age, and ought to be recognized so as to bring them into existence. On the other hand, say, the Kantian ideas of international law, world peace, and a league of nations were not actual in Hegel's era. They could appear as no more than things to wish for—like a wish for airplanes. At a later point, of course, airplanes become actual and then, indeed, come to exist. So does a League of Nations. In Hegel's day they did not exist and Hegel was consistent in seeing them as utopian fancies. Philosophy cannot see the future. It cannot transcend its age—it cannot leap over Rhodes.

Or we might say that a League of Nations was an Idea in the Kantian sense but not the Hegelian sense. Kantian Ideas arise from our tendency to project the categories of the understanding beyond experience, which gives us no knowledge but only transcendental illusion. Nevertheless, for Kant, we must treat these Ideas *as if* they were real if we are to organize the totality of our knowledge in order to enable the legitimate operations of the understanding.¹³¹ For Hegel, the Idea is a part of our spirit, the result of our recognition. It is actual. It is a force that acts in our world, that motivates a people, that shapes them, that gets embedded in their art, religion, philosophy, law, and political institutions. The Idea is a reality. In Hegel's era, a League of Nations was not an Idea in this sense, but only in a Kantian sense.¹³² In our era, a League of Nations, or a United Nations, has become an Idea in the Hegelian sense. It is not only actual; it also exists. On the other hand,

world peace certainly does not exist. Whether it is more than a utopian wish, whether it could be called actual, is at best debatable. International law is actual, but still a good ways from fully existing. At any rate, we are hardly at the end of history.

Structure, Method, and Development

Before we can complete our introduction and move on to “Part One” of the *Philosophy of Right*, there is another more complex and difficult matter that we must discuss. All of Hegel’s books involve a peculiarly Hegelian structure, method, and development. Some of these proceed historically. In the *Philosophy of History*, the development moves historically from ancient Asia to modern Europe. So also the *History of Philosophy* moves from earlier to later philosophers. In the *Aesthetics*, the development moves from the ancient to the modern and at the same time from lower to higher forms of art. The *Philosophy of Religion* also moves historically from earlier to later and (in Hegel’s opinion) from lower to higher religions.

The development that occurs in the *Philosophy of Right* is not historical. Hegel says that it concerns the philosophical science of right.¹³³ Scientifically, *Moralität* is taken up before *Sittlichkeit*, whereas historically *Sittlichkeit* in the ancient world preceded *Moralität*. Civil Society follows the family and precedes the state in the scientific order of the *Philosophy of Right*, but historically both the family and the state preceded the development of civil society, which occurs only in the modern world.¹³⁴

We find another sort of development in the *Phenomenology*, which we must discuss if we are to understand the development we find in the *Philosophy of Right*. The *Phenomenology* gives us a proof—Hegel calls it a deduction—of the absolute. The *Philosophy of Right*, for its part, assumes the existence of the absolute and proceeds to set out a philosophic science of right. In the *Encyclopaedia*, Hegel tells us that when the *Phenomenology* was first published it was described as the first part of the system of science.¹³⁵ The philosophic science of the *Philosophy of Right*, in a very important way, depends upon the *Phenomenology*. The *Phenomenology* was the first part of the system of science and the *Philosophy of Right* is a later part.¹³⁶ To understand the structure, method, and development of the *Philosophy of Right*, we must understand that of the *Phenomenology*.¹³⁷

The clearly stated task of the *Phenomenology* is to educate ordinary consciousness—that is, raise it “to the form of Science.”¹³⁸ In the *Phenomenology*, we have a movement from the simplest knowledge all the way to absolute knowing, that is, total, all-encompassing knowledge.

The *Phenomenology* can be thought of as divided into three parts: individual consciousness (made up of chapters I to V), cultural consciousness (made up of chapter VI on Spirit), and absolute consciousness (which includes chapters VII and VIII on Religion and on Absolute Knowing).

In the first part, we deal with the awareness of individual consciousness. In the second part we deal with a culture and with its consciousness. Here we get a more complex collective awareness—the consciousness, practices, and concerns of a culture. The third part deals with absolute consciousness. It gives us a total perspective, a God’s eye perspective—the religious consciousness and identity of a culture.

As it proceeds, the *Phenomenology* sets out different forms of consciousness. It sets these out from the simplest to the most complex, from individual consciousness to absolute consciousness. And it attempts to lead ordinary consciousness along until it arrives at and accepts the absolute. That is how the *Phenomenology* is set out. That, however, is not the real order of things. The absolute is not a last stage found only at the end. The absolute is present all the way along. It is a necessary presupposition for all earlier, simpler forms of consciousness. Nothing is outside the absolute.

Thus the *Phenomenology* does not begin with individual consciousness in the manner that a Hobbes, Locke, or Kant would, and from there proceed to deduce the absolute. That sort of individual consciousness radically apart from the absolute, in Hegel’s view, is impossible. We begin with such a perspective only to show that it must fail.¹³⁹

Hegel tries to show that individual consciousness cannot hold up without cultural consciousness, which cannot hold up without absolute or religious consciousness. Hegel sets out forms of consciousness from the simplest to the most complex. Each form of consciousness echoes and embeds traditional philosophical views—found in metaphysics, or epistemology, or ethics, or political philosophy, or philosophy of religion. And Hegel shows us that none of these positions is able to hold up—avoid contradiction, difficulty, or inadequacy—until we arrive at the absolute.

Each stage lacks something. To deal with what is missing, we come to see, requires a more complex conceptual scheme or paradigm, one

that can include all that the earlier scheme did together with what it could not. In this process we discover the conceptual presuppositions necessary to explain our experience. To do so completely, Hegel tries to show us, ultimately requires a paradigm that will encompass all of reality.

Hegel tells us that the *Phenomenology* gives us a justification (*Rechtfertigung*), a deduction (*Deduktion*), of the absolute. In other words, the argument used in the *Phenomenology* to prove the absolute, Hegel is claiming, is the same sort of argument that Kant called a transcendental deduction (*Deduction*), and which Kant used to show the legitimacy (*Rechtmässigkeit*) of the categories.¹⁴⁰ For Kant, it is impossible to deny that we have ordered experience. His transcendental deduction asks *how* we can have that experience—it tries to find the transcendental conditions that make ordered experience possible. Kant shows us that the categories of the understanding are those conditions. He shows us that only through the categories of the understanding is it possible to have ordered experience. He thus gives us a deduction of the categories, justifies them, proves them.¹⁴¹ Hegel is doing much the same sort of thing in the *Phenomenology*. He sets out various forms of our experience, from the simplest to the most complex. Then he seeks to explain how we can have this experience; he seeks the conditions that make these experiences possible; he seeks to justify them; and shows us that in order to do so we must move all the way to the absolute. Anything less than the absolute will not adequately account for the complexity of our experience. That is Hegel's argument.¹⁴²

The *Phenomenology* does not proceed by setting out true propositions from which it logically deduces further true propositions. What happens instead is that at each stage our explanation fails. In one way or another it is inadequate, incomplete, false. So we must move on to more complex presuppositions. And that continues until we reach the absolute. What we have, Hegel says, is a “pathway of *doubt*,” a “way of despair,” a “thoroughgoing scepticism.”¹⁴³

Each stage fails, though not necessarily in every sense. We do accumulate a good deal of explanation, or potential explanation, along the way. But our experience has not been explained completely until we get a paradigm with enough scope to include everything and make it an integrated part of a whole. Hegel's approach can be compared to Plato's. There is no logical deduction of the Forms. Instead we seek the necessary presuppositions for our knowledge. We move backwards through these presuppositions dialectically until we reach the Forms.¹⁴⁴

However, we must not suggest that the absolute is merely off somewhere at the end of the road. We are never outside the absolute, though, of course, we are not going to accept this, even see it, until the absolute has been proven. But once we have a deduction of the absolute, once we see that it exists, then we see that nothing exists outside the absolute.

Hegel's *Encyclopaedia*, like the *Philosophy of Right*, does not develop historically either. Moreover, like the *Phenomenology* and the *Philosophy of Right*, it also develops from the simple to the complex.¹⁴⁵ But unlike the *Phenomenology* and like the *Philosophy of Right*, it is not out to prove—give a deduction of—the absolute. That was accomplished in the *Phenomenology*.

The *Phenomenology* gives a deduction of the absolute, from which the *Encyclopaedia* and the *Philosophy of Right*,¹⁴⁶ as well as other texts like the *Philosophy of History*, the *Aesthetics*, and the *Philosophy of Religion*, take off. But it is not as if the *Phenomenology* just deduces a principle with which the other texts start. The *Phenomenology*, in giving a deduction of the absolute, gives us the totality of all reality within which we exist, have consciousness, and know all that we know. The *Encyclopaedia*, as well as all of the other texts, takes place within this absolute that the *Phenomenology* establishes. If, then, the *Phenomenology* is correct in its deduction of the absolute, nothing exists outside the absolute—not even the stages of the *Phenomenology* itself.

Once we realize that nothing is outside the absolute, at that point, each stage of the *Phenomenology* has to be re-grasped in a different way. Each stage has failed in its attempt to stand on its own and show us that it was not necessary to go on further to an absolute. We must now re-conceive each of these stages. We must now see them as parts of the absolute—as internally related parts of a totality.¹⁴⁷ Hegel does not, in the *Phenomenology*, go back through these stages to show us what they would look like when viewed in this way. That, however, is very much the sort of thing he does do in the *Encyclopaedia*, as well as in the *Philosophy of Right*. In the *Encyclopaedia*, Hegel explores, articulates, and sets out in positive fashion all of these stages. And this includes those concerned with right,¹⁴⁸ stages that will be articulated even further, explored in even greater depth, and treated more systematically, in the *Philosophy of Right*.¹⁴⁹ The absolute is given to us in the *Phenomenology*, proven for us, and then in the *Philosophy of Right* we dig further into one of its aspects—that of right.

The *Philosophy of Right* too moves from simple to complex, from abstract right to world history and absolute right, but what moves us each

time to the next step is not the failure of the preceding step. At each step (possession, property, contract, wrong, crime, punishment, welfare, the good, and so forth), Hegel tries to explain what can be explained at that conceptual level, echoing traditional ethical-political theories that would make that concept central, and we see that that step alone cannot explain completely our experience of right.¹⁵⁰ We might be tempted to say that just as in the *Phenomenology*, here too each stage fails and that we must move on to a more complex stage.¹⁵¹ But in the *Phenomenology*, each stage presented itself as able to explain all that needed to be explained, such that we needed go no further to explain the possibility of our experience. And each stage failed to show that. In the *Philosophy of Right*, on the other hand, we have the absolute from the start. It has been proven in the *Phenomenology*, and the *Encyclopaedia* even included a sketch of the part of it that has to do with right. And so it would make no sense to say that each stage of the *Philosophy of Right* fails, because each stage does not put itself forth as the whole. It does not put itself forth as able to explain our complete experience of right such that we need not bother to go on to the absolute. The ethical-political theory being echoed (that, say, of Locke, Rousseau, Kant, or others) itself might have no conception of the absolute and may well think it can stand alone without it. We, however, know better. We have had the absolute proven to us. We know what the absolute is. And so we see each stage as just a part of it. And after we examine each stage, we can see what is missing and what else we need take up in order to articulate the absolute totality of right. If we have the absolute, if we see that the present stage gives us only a part of it, then we can work out what we must take up next in order to carry forward our articulation of the absolute.

The absolute is a rationally interconnected totality. We need to see and to articulate that interconnection. The *Encyclopaedia* begins to give us an overview of all this. Other Hegelian texts take up parts treated in the *Encyclopaedia* and give us greater detail and more complex connections. The *Philosophy of Right* in doing this moves from the simple to the complex, the abstract to the concrete, from abstract right to absolute right. This is not an attempt to prove the absolute, but to set out its aspects, articulate their complex interconnections, and see how the whole includes its parts. We want to examine the absolute analytically, philosophically, scientifically. We want to get a “*more articulate determination and a truer definition of the Absolute. . .*”¹⁵² The absolute in its full richness appears only at the end of the *Philosophy of Right*. Only there do we get the real

world—world history as the interaction of actual states. Before that we have abstracted from the real world to one degree or another. Earlier stages of the *Philosophy of Right* were abstracted out of the whole and as we move through the stages of the text we move back toward the concrete whole.¹⁵³ The *Philosophy of Right*, as it were, is coming from the absolute, moving through it, and heading back to it. The *Philosophy of Right* does not prove the absolute, but it does confirm it, reinforce it, and bring it into better focus as the totality of the interconnected network of aspects that make it up. As Hegel writes:

[I]t is the absolute form into which all determinations, the whole fullness of the content posited by it, have returned. In this perspective, the absolute idea is to be compared with the old man who utters the same religious statements as the child, but for whom they carry the significance of his whole life.¹⁵⁴

The *Phenomenology* gave us a deduction of the absolute. Thus the absolute is given to us. We have it. We are within it. But to *possess* it, to comprehend it, we must go through, take in, and connect the various parts that make it up. We must no longer see these parts as insufficient, unable to hold up, thus forcing us on toward the absolute. We have gained the absolute and we now want to see the parts as positive elements in their proper place. This will mean a specifying of the determinate details of the absolute. That will mean a concretizing of it, and thus an actualizing of it—a bringing the absolute to life in all its real-world detail.

Moreover, as we have seen earlier, science is a form of recognition. Science is capable of recognizing what is actual. And thus science is capable of contributing toward making it real. Science moves from the abstract to the concrete conceptually and philosophically, that is, scientifically, and this science also moves us toward the concrete actually, really, and historically.

Such movement, Hegel says, is not due to the

external activity of subjective thought, but the *very soul* of the content. . . . This development of the Idea as the activity of its own rationality is something which thought, since it is subjective, merely observes, without for its part adding anything extra to it. To consider something rationally means not to bring reason to bear on the object from outside in order

to work upon it, for the object is itself rational for itself; it is the spirit in its freedom . . . which here gives itself actuality and engenders itself as an existing world; and the sole business of science is to make conscious this work. . . .¹⁵⁵

So we can say that the *Phenomenology* gave us a deduction of the absolute—proved it. The *Encyclopaedia* explored it, articulated it, set it out, and gave us an overall map of it. The task of the *Philosophy of Right* is to articulate it in greater detail and to recognize it, actualize it, and thus help realize it in the existing world. After all, the “subject-matter of the philosophical science of right” is not only “the concept of right” but “its actualization.”¹⁵⁶

Philosophy’s task, Hegel says, is “to develop the *Idea*. . . .”¹⁵⁷ The *Idea* can be developed in two ways. (1) In philosophy we set out the *Idea*, explain it, justify it, evaluate it, articulate it, and so forth. (2) In the world, in history, the *Idea* is developed by being embedded in law, political institutions, art, religion, philosophy, and so forth. It is recognized and made real. We must notice that to do (1) is to do (2). Indeed (1) constitutes a rather high level of doing (2). The recognition conferred by philosophy is higher, closer to the absolute, than any other form of recognition. That is the form of recognition that is conferred by the *Philosophy of Right*, which would contribute significantly toward the actualization of the modern rational state.

Let us move to “Part One” of the *Philosophy of Right*.

Abstract Right

Right and Spirit

In the Introduction to the *Philosophy of Right*, Hegel told us that freedom “constitutes the substance and determination of right. . . .”¹ He also said that right is the existence of *free will*. At the same time, he takes care to remind us that this conception of right, since Rousseau, has ordinarily been understood as having its basis in the will of particular individuals, that is, of single persons. Hegel rejects this notion. Freedom, and thus right, have their substantial basis in *spirit*.²

We must view right, I suggest, much as Hegel thinks we should view a state’s constitution, that is, not as established by a particular document, say, a declaration of rights or a bill of rights, but as the expression and development of the spirit of a people, a development that took place bit by bit over a long period of time. Rights, like laws, carry “the authority of millennia . . . [t]he whole of mankind has labored upon them. . . .”³ As Wood puts it, Hegel gives us “an ethical theory which identifies the human good with the self-actualization of the human spirit.”⁴

Moreover, like the constitutions of states, rights are based on recognition. As Williams puts it, “Owing to their freedom, human beings may be capable of rights, but these rights remain mere possibilities unless they become actual in the medium of recognition, and in this sense recognition is the foundation of right.”⁵ Indeed, we have seen that for Hegel it is philosophy’s task to recognize the Idea of right and to actualize it.⁶

And so it is not at all surprising to find that property, the first right taken up in “Part One: Abstract Right,” is made actual through recognition, nor that all of this must be understood as occurring within spirit. This whole section would be radically misunderstood, then, if we were to imagine Hegel as proceeding like a Hobbes, a Locke, or a Rousseau.

While Hegel does begin with an individual will, he nevertheless believes that it is spirit as a whole that is fundamental. But he abstracts from the totality of spirit. He starts with a will that has been stripped of all that—an abstract will and its abstract rights. This may look like Hobbes or Locke, but what Hegel wants to do here, as I argued in chapter 1,⁷ is show us that these simple abstractions necessarily presuppose the complex totality of spirit for their possibility.

Thus it would be a serious mistake to see the first, earlier, abstract steps of the argument as the basis, the ground, *from* which we deduce and thus justify later steps. Rather, for Hegel, we move from earlier, simpler steps to the more complex *presuppositions* necessary for the possibility of those earlier and simpler steps—and thus ultimately we move toward the whole of spirit. In other words, we do not from property deduce civil society or the state, as, say, for Locke. Rather we come to see that property presupposes the family, civil society, and the state, and is shaped by and within them. Only within these higher, more complex, and more concrete realities, does property achieve the appropriately configured existence of its moments.⁸

It also follows from this, for Hegel, that there can be no social contract argument to the effect that we can justify the state beginning with property or contract.⁹ Moreover, it cannot follow, because we take up a right to property at the start, that we have, as for Locke, an *absolute* right to property prior to and independent of the state, with which the state can therefore have no right to tamper.¹⁰ Our right to property will be shown to *presuppose*, depend upon, and derive from the higher reality of the state within which it will be appropriately configured.

Wood argues that Hegel is being antireductionist here. Higher spheres of right, like the state, cannot be analyzed into lower ones like property and contract.¹¹ Williams, following Ilting, suggests that in Abstract Right Hegel adopts a methodological individualism as a methodological fiction—and that, indeed, the heading “abstract right” is intended to indicate this.¹²

And so to begin to argue that ultimately we must presuppose the totality of spirit, we start at the opposite pole with a simple abstraction. We start with an abstracted individual will—that is, with a person. Put most simply, a person is a being with the general capacity to possess rights—and thus is the core concept of abstract right.¹³ A person, Hegel says, is a subject that knows itself as free.¹⁴ In chapter 1, we set out four levels of freedom as *Beisichselbstsein in einem Andern*, being with

oneself in another. The person exists at the first level, where we have a consciousness that can abstract from everything external and turn into itself. Within itself it faces no obstacles or obstructions—nothing other.¹⁵ It is alone with itself and free. At the same time there remains an “external world immediately confronting it.”¹⁶ To assert its freedom, therefore, it must overcome what it confronts as external. To give itself reality as a person, it must count the object confronting it as null and void. It must posit the object as its *own*.¹⁷ Abstract right is this sort of being with oneself in another, the simplest manifestation of which is possession or property.¹⁸

The person must give itself an external sphere of freedom.¹⁹ It must be free in the world—a world that is not an other. The world must be its own. Thus I have a right to put my will into things and make them mine. Humans have an absolute right to appropriate all things.²⁰

Property

Where Locke based the right to property on labor, Wood suggests that Hegel bases it on will.²¹ I put my will into a thing and make it mine. Free will, Hegel says, is an “idealism which does not consider things . . . , as they are, to be in and for themselves,” but rather claims them as its *own*.²² Nor is property, for Hegel, primarily a means toward the satisfaction of needs. It is the existence of free will—and thus essentially an end.²³ And since my will, the will of an individual, becomes objective in property, property acquires the character of *private* property.²⁴ A thing belongs to the person who first takes it into possession, such that this taking possession is recognizable by others.²⁵

For all the emphasis here on the assertion of individual will, we must not forget Hegel's ultimate concern with spirit. Spirit must pull everything external into spirit, make it its own, make us at home in the world, and give us freedom as *Beisichselbstsein*. It is just that spirit does so at this level by grounding and thus giving a real place to individual will and private property, that is, property as my *own*. One can notice this larger concern with spirit in the way that Hegel treats private property. He claims that, in the historical development of spirit, freedom of personhood began a long time ago with the rise of Christianity, whereas freedom of property has only been recognized relatively recently. And, in Hegel's opinion, the higher development of freedom requires a right to

private property.²⁶ While socialists are not likely to be comfortable with this, we can appreciate Hegel's position by contrasting it to situations where people are *prohibited* from owning private property. Hegel points to Plato's *Republic*.²⁷ We might think of feudal serfdom. In contrast to such situations, a right to private property constitutes a serious advance toward freedom, which even the socialist should admit.

On the other hand, like Locke, Hegel rejects equality of property. He even, at the level of Abstract Right, rejects as a mere moral wish the view that all should have income sufficient for their needs.²⁸ Nevertheless, Hegel does not, like Locke, take the right to property to be an absolute such that the *primary* task of the state is to serve and defend property.²⁹ And when we get to the higher level of civil society, we will see that the job of the state will in fact be to work against poverty.³⁰

We have said that in simple taking possession my will becomes recognizable by others,³¹ but what is really required for my will to become objective to me is the recognition that occurs in contract, where "I no longer own property merely by means of a thing and my subjective will, but also by means of another will," such that "I have property by virtue of a common will. . . ."³² Here we begin to get recognition with greater scope and solidity.

For Hegel, contract has its place at the relatively low level of property. Contract has no place at higher levels. Hegel rejects Kant's subsumption of marriage under the concept of contract, and he denies that contract has any place at the level of the state. That would be to transfer "the determinations of private property to a sphere of a totally different and higher nature."³³ Again, unlike Locke, lower level concepts like property and contract cannot be used to justify higher level realities that will appropriately reconfigure them.

Contract involves the particular wills of immediate persons, and thus it would be a contingent matter whether or not those wills conform to the universal. If a particular will is at variance with the universal, it is wrong.³⁴ Wrong can rise to the level of force or coercion, and coercion that infringes right as right is crime.³⁵ What emerges here, in Hegel's view, is that abstract right is a coercive right. If wrong is committed against it, the protection against such a force will appear as a force that supersedes the original force.³⁶ Right must reestablish itself by negating the negation of itself.³⁷ For Hegel, the *Aufhebung* of the infringement is necessary in order that right demonstrate its validity, restore itself,

and actualize itself.³⁸ This brings us to Hegel's rather famous theory of punishment.

Punishment

Hegel attempts to give us a justification of punishment. I think it fails. More interestingly, I think it backfires and illuminates in an especially clear fashion serious and difficult obstacles in the way of justifying punishment at all.³⁹ In fact, I think Hegel ends up giving us, despite himself, a valuable argument *against* punishment.

Hegel rejects consequentialist theories of punishment, theories that attempt to justify punishment as prevention, deterrence, or threat, which are supposed to result in some general good.⁴⁰ Marx, who agrees with Hegel here, puts it as follows: "what right have you to punish me for the amelioration or intimidation of others?"⁴¹ Moreover, Hegel thinks that to ground punishment on threat is to presuppose that people are not free. He says, "To justify punishment in this way is like raising one's stick at a dog; it means treating a human being like a dog instead of respecting his honor and freedom."⁴²

These theories also presume that punishment is an evil and that only its consequences make it good.⁴³ Hegel will have none of this. He thinks it "unreasonable to will an evil merely because another evil" has been committed.⁴⁴ And while he admits that retribution *appears* evil or immoral, he denies that punishment is an alien determination that imposes an evil on the criminal from outside. The punishment is simply the manifestation of the crime—its other half.⁴⁵ The crime and its punishment, as Williams puts it, "are not two separate, externally related actions but correlative aspects of an organic whole."⁴⁶ Indeed, in another text, Hegel argues that in the ancient world, before revenge and punishment were distinguished, revenge/punishment was carried out by the Eumenides—the Furies. Punishment, as it comes to be distinguished from revenge, is carried out instead by a state-run court.⁴⁷ If punishment could be carried out simply by the Furies, or by fate, or, as in Chaucer's "Pardoner's Tale," by the criminals themselves, who turn upon each other and do themselves in,⁴⁸ we would not have to justify *our* actions in punishing criminals. But if punishment is carried out by a state court, that is, by *us*, we do have to justify our role in the

process of punishment. It must be right to punish, and we must have the right to punish.

In §100 of the *Philosophy of Right*, Hegel argues that punishment can be justified because it is the criminal's own will, because the criminal's action lays down a principle that in effect the criminal has recognized by acting upon it. Implicit in the action of a rational being is that the action is universal in character. The criminal sets down a universal law. If the criminal kills, the criminal's act declares that it is allowable to kill. The criminal's act declares that killing is "*a right for the criminal himself.*" And so we just subsume the criminal under the criminal's own principle. The criminal's own act consents to the punishment. We simply impose the criminal's own law upon the criminal.⁴⁹ In another text, and even more clearly, Hegel says the criminal sets up a law that is "recognized by him only—a universal which holds good *for him*, and under which he has at the same time subsumed himself by his action." Such a universal implies an "outrage on right."⁵⁰

At any rate, the criminal is subsumed under the criminal's own principle, which means that what is done to the criminal is what the criminal did to others. This accords with "the universal feeling of peoples and individuals . . . that *what the criminal has done should also happen to him.*"⁵¹ The criminal is treated rationally—in accord with the same rational and universal principle the criminal established. The criminal is honored as a rational being. Punishment is derived from the criminal's own deed. This annuls the crime and restores right.⁵² Crime contains within itself its own annihilation. Punishment is just the manifestation of the crime, not something alien imposed from outside.⁵³ Right reestablishes itself by negating the negation of itself.⁵⁴

At this point, we can begin to see why Hegel's attempt to justify punishment backfires. We must take care to notice that the principle the criminal lays down, the criminal's universal, is *not* a reasonable universal. The principle implicit in the criminal's act is a *false* universal—the principle, say, that it is right to murder.⁵⁵ This is a "universal which holds good *for*" the criminal alone, and is an "outrage on right." This is what makes the person a criminal and the action a crime. The criminal is not right in acting on this principle. It is not a rational principle. It should not be universalized. If that is so, how then can we claim that *we* are right in acting on the criminal's principle—in subsuming the criminal under the criminal's universal?⁵⁶ If the criminal's principle is a crime for the criminal, if it is wrong for the criminal, if it is irrational

for the criminal, how can it flip into being right, just, and rational for us?⁵⁷ A right to punish has *not* been established here. If I act on the false principle that it is acceptable to murder, does that make it right for my neighbor Jones to act on the same false principle? Or my neighbor Smith? Or the neighborhood association? Why then the state?

Hegel's argument is certainly not that the state has a right to punish because it is the state. His argument is that the state has a right to punish because that right is implicit in the criminal's own act. It is just that this argument is not a good argument.⁵⁸

If criminals act on the principle that it is allowable to violently assault people, then those criminals, it is true, cannot consistently object if the same principle is applied to them. How can criminals complain if the same principle they applied to others is applied to them? We might even accept the claim that criminals *deserve* to be treated in accord with the same principle they applied to others. Hegel thinks "the universal feeling of peoples and individuals towards crime is, and has always been, that it *deserves* to be punished, and that *what the criminal has done should also happen to him*."⁵⁹ This is not to say, however, that Hegel, like Kant, accepts *lex talionis*. Indeed, Hegel thinks the insistence on an equality between the crime and its punishment can easily appear absurd, "an eye for an eye, and a tooth for a tooth, so that one can even imagine a miscreant as one-eyed or toothless. . . ."⁶⁰ This is not the sense in which Hegel agrees with "the universal feeling . . . that *what the criminal has done should also happen to him*." He simply thinks criminals should be subsumed under the same principles they set down as universal laws, which means he thinks that what we have here is a justification of the "universal aspect of punishment," that is, a justification of punishment in general, the establishment of a right to punish, *not* a determination of what the particular punishment might be (an eye, a tooth, or a certain number of years in jail).⁶¹

At any rate, I do not wish to dispute "the universal feeling of peoples" that the criminal *deserves* to be punished. In fact I might even grant that the criminal *deserves* to be punished. But that does not make it *right* for us to punish.⁶² That does not give us such a *right*.⁶³ That does not explain where such a right would come from. If criminals act upon a *false* universal, if that false universal makes them criminals, how can it be right for us to act on that same false universal? How can it be right for us to subsume the criminal under that same false universal? How would we get such a right?⁶⁴ What could establish such a right?⁶⁵ Something must be done to the criminal. Criminals may even deserve

to be punished. But we have no right to act on the criminal's principle. If it was a crime for the criminal, how could it be right for us?

In one passage quoted above, it might seem that Hegel can sidestep this problem. He speaks of the criminal's principle as that "under which *he* has at the same time *subsumed himself* by his action."⁶⁶ Perhaps the problem could be sidestepped if *we* did not have to do the punishing ourselves, if criminals subsumed *themselves*, or if we could rely on others to carry out the punishment—on the Furies or on the criminals themselves as in Chaucer's "Pardoner's Tale." But if the state has to do the punishing, that is, if *we* have to do the punishing, then we must have a right to punish, and Hegel has not shown us that we can establish that right.

Later in the *Philosophy of Right*, when we take up a discussion of civil society, Hegel says that crime, in civil society, becomes an injury not just to the individual but to the universal: "an injury to *one* member of society is an injury to *all*. . . ."⁶⁷ If so, then for the state to subsume the criminal under the criminal's own principle, for the state to impose a false universal on the criminal, would mean, certainly, that the state was injuring the criminal, but not *just* the criminal. The state would also be injuring *all* of society—the universal.

To put this in other words, Hegel's treatment of punishment shows us that the state, in punishing, would act on the same principle for which it reproaches the criminal. Moreover, it is worth pointing out that in other contexts Hegel is quite willing to reject such a notion—and to hold that the state should *not* act on the same principle that it reproaches others for. Hegel writes that, "technically it may have been right to refuse a grant of even civil rights to the Jews on the ground that they should be regarded as belonging not merely to a religious sect but to a foreign race." He goes on to say that to treat them in this way would be to "confirm the isolation with which they have been reproached." In other words, just as the state should treat the criminal in accord with the principle expressed in the criminal's own action, so *technically* it *might* have been right for the state to treat the Jews in accord with the principle (it supposes was) expressed in their own action. But in the case of the Jews, though not in the case of criminals, Hegel *rejects* this view. He rejects the view that the state should treat people in accord with their own principle. For the state to do this to the Jews would be "blamable and reproachable, because by so refusing [a grant of civil rights, the state] would have misunderstood its own basic principle. . . ."⁶⁸ Hegel is say-

ing that the state would be going against its own basic principle, that is, it would act against right, in treating the Jews in accord with the principle expressed in their own action. Despite the fact that there is a certain amount of anti-Semitism here (in the characterization of the principle attributed to the Jews), there is a very important point that emerges, namely, that sometimes it is right for the state to refuse to treat groups of various sorts in accord with the principles expressed in their own actions. Hegel, or us Hegelians, should see that this same refusal should also be applied to criminals and punishment.

If punishment is to be ruled out, how then are we to treat criminals? In another text, Hegel himself tells us that, "Upper-class offenders [are to be confined in] a fortress, not in prison among criminals of other classes."⁶⁹ J. Q. Whitman very helpfully informs us that in France and Germany during the eighteenth century, fortress confinement was the norm for high-status offenders. Upper-class criminals were not put in ordinary prisons among the lower classes—that would degrade and dishonor them. Fortresses allowed the upper-class criminals a relatively normal and comfortable existence, where they were shielded from shame and treated with dignity. Whitman argues that in France and Germany, since the eighteenth century, fortress confinement has largely driven out and replaced harsher lower-status imprisonment.⁷⁰

My argument, then, is that Hegel's justification of punishment fails. This is not to say, however, that we should disagree with all of Hegel's views here. There are, I think, many ways in which we should agree with him. For example, I think we do have rights and that we do have the right to use necessary and appropriate force to defend these rights.⁷¹ We have the right to use such force to stop a crime in progress and to prevent it from being repeated. We have a right to make criminals recompense their victims.⁷² And we have a general right to defend ourselves from crime and from criminals. So far, however, none of these rights would entail a right to punish the criminal. All of these rights could be enforced without resorting to punishment. Most arguments in defense of punishment simply assume that there is no real objection to it. One rarely finds a defense of punishment that assumes a real opponent who seriously disagrees.⁷³ To justify punishment, I think, as does Hegel, that one must establish a right to punish.⁷⁴ I just do not think that Hegel succeeds in establishing such a right. Moreover, I think that doing so would not at all be an easy task.

At the same time, I think that a right to punish is unnecessary. I think that our right to defend ourselves from criminals would be enough to give us a right in appropriate circumstances to keep criminals away from us: to exclude or banish them. Moreover, I think this would be sufficient to effectively stop crimes, prevent their repetition, and protect us from the criminal, all without resort to punishment. We certainly have a right to exclude criminals. If someone enters my house and commits a crime, I have a right to make them leave and not return. The same for my yard. The neighborhood would have the same right. And so also the city or the state.

Banishing criminals, however, might not be acceptable to the states to which they would be banished, and thus we might not be able to establish a right to banish them to those states. Moreover, some of those states might impose punishment on the criminal, and so, if we oppose punishment, we should not banish them to those states. Moreover, the distances involved in such banishment might impose excessive and unnecessary hardship on criminals and their families.

Such considerations, then, might limit us to a system of internal exclusion. Minimally, such exclusion could involve the monitoring of criminals by means of GPS bracelets and parole officers, so as to keep them away from opportunities for crime.⁷⁵ Maximally, it could involve confinement in places that keep criminals away from us but allow them to live lives otherwise free of punishment. Fortresses, or what detractors call “country club” prisons, if properly adjusted, might function as an acceptable form of such exclusion. Such confinement could be minimized by allowing inmates to hold outside jobs during the day, or even by merely intermittent confinement, say, on weekends.⁷⁶ Banishment within banishment would be necessary to keep violent criminals away from nonviolent ones.

There are many, however, who would insist that the exclusion of criminals is itself a form of punishment. But that just produces confusion. We could, if pressed, distinguish between different forms of punishment—say, punishment₁ and punishment₂. But it will be much clearer to simply distinguish between punishment and exclusion.

Exclusion may subjectively be felt by the criminal as punishment, but we have done no more than separate ourselves from the criminal. We just defend ourselves. We just keep the criminal away from us. We have a right to exclude the criminal. I do not think we can establish a right to punish the criminal.

It is often argued that punishment must harm the criminal. It is also the case that exclusion harms the criminal. I am not arguing against harming criminals. While it may be the case that all forms of punishment involve harm, it certainly does not follow that all forms of harm amount to punishment.

The line between punishment and exclusion, certainly if we focus on harm, can be blurry. But we can envisage a spectrum. Moving toward one end of the spectrum we find what exists in jails and prisons in the United States, where criminals are subject to degradation and the threat of violence—from guards, gangs, and other inmates.⁷⁷ Such places are a Hobbesian state of nature in close confinement. Let us call this San Quentin-style punishment. Toward the other end of the spectrum we find simple exclusion. My argument is that our actions can be justified insofar as we tend toward simple exclusion and that our actions are progressively unjustified as we move toward San Quentin-style punishment.

The sort of harm that should be opposed, then, is that found toward the San Quentin end of the spectrum. We have no right to inflict that. But we do have a right to exclude criminals. And insofar as that involves harming them, we have a right to harm them in that fashion.

We might also try to carve out a distinction between imprisonment and exclusion. Imprisonment, certainly as it exists in the United States, involves a system that allows criminals to be subject to degradation and the threat of violence—and it accepts this as *legitimate*, at least insofar as it lets it continue. Exclusion, as I understand it, would reject such behavior and certainly its legitimacy—it would not permit it to continue. In other words, despite the fact that a system of exclusion might send people to prison (albeit, of the “country club” or fortress variety), this should be distinguished from imprisonment. Exclusion is to be understood as keeping criminals away from us, where they can lead relatively normal lives, at least in the sense that they can be free from degradation and the threat of violence. Imprisonment not only allows the criminal to be subjected to degradation and the threat of violence, it accepts this as justified (at least insofar as it lets it continue). If this is a reasonable way to carve out a difference between imprisonment and exclusion, then we can oppose imprisonment, and only allow exclusion.

Whitman argues that imprisonment (understood in the way described here) has been eliminated in France and Germany—at least in theory, if not always in practice. These countries are opposed to degrading the prisoner and think life in prison ideally ought to approximate life outside prison.⁷⁸

Those who believe in punishment, however, are still likely to argue that exclusion is nothing but another form of punishment, and thus that a rejection of punishment is misguided. Instead, they might think that one should argue only against San Quentin-style punishment but *for* country club-style *punishment*, that is, that the argument should be reformulated into one about the *severity* of punishment, not its rejection. Such a reformulation should be resisted. It should be resisted because there is an important conceptual difference between punishment and self-defense. We have a right to defend ourselves against criminals and this is enough to give us a right to exclude them. I do not think it possible to establish a right to punish. I have in no way appealed to such a right. All that is needed here can be gotten from a right to self-defense. This is to say that we only have a right to do to criminals what can be deduced from a right to self-defense, *not* what would require a right to punish.⁷⁹

If this were a book on punishment, a great deal more work would have to be done here to spell out what would be acceptable and what not at different levels of exclusion and where exactly to draw the line between exclusion, on the one hand, and punishment or imprisonment, on the other. We would also have to discuss the length and type of exclusion appropriate for any given crime. Since this is not a book on punishment, but a book on Hegel, those tasks will be left aside.

At any rate, I think we have a right to exclude criminals. I doubt that we can establish a right to do much more than that to them—certainly not to inflict San Quentin-style punishment on them. And we certainly cannot just *assume* that we have the right to punish or imprison. Such a right would have to be proven, and I do not see that it ever has been.

Hegel also holds the view that if society were to do nothing about a crime, the crime would be posited (*gesetzt*) as right. A crime must be posited as a crime.⁸⁰ That is necessary if right is to become actual.⁸¹ Crime must be recognized as crime. It cannot be the case, and it cannot appear to be the case, that the crime is not taken seriously, is ignored, or is tolerated. It must be stamped as crime. This, at least in part, is the point behind Kant's infamous claim that were a society to be dissolved by the consent of its members, the last imprisoned murderer would first have to be executed.⁸² In other words, and I am in full agreement, a crime must *always* be posited as a crime. It is just that punishment, let alone capital punishment, is not necessary to posit crime as crime.⁸³

A crime certainly demands that *something* be done to the criminal. If we capture a Nazi who escaped to Paraguay, something must be done even after seventy years. Letting the Nazi live in Paraguay does not count as banishment or exclusion. The Nazi's acts must be effectively stamped as serious crimes. They must be posited as crime. The Nazi must be tried, found guilty, and given a serious sentence. But the Nazi need not be sent to San Quentin.

In 2011, at the age of ninety-one, John Damjanjuk was found guilty of accessory to mass murder by a German court for taking part in the killing of more than 28,000 persons in Nazi occupied Poland during 1943.⁸⁴ The judge took into consideration Damjanjuk's age and ill health in sentencing him to five years in prison. In my opinion, that was not an adequate sentence. Damjanjuk should *at the very least* have gotten the maximum sentence allowed (which was fifteen years), even if it was suspended due to age and illness—and despite the fact that he died less than a year after his conviction. The short sentence he received made it appear that his crime had not been taken as seriously as it should—that it had not adequately been posited as crime.

So also, by the way, allowing presidents to get away with torture, even the assassination of citizens, is *extremely* wrong, and to let such crimes go is to allow them to be recognized as right. Hegel is correct on this. Crime must clearly and adequately be recognized as crime. But none of this requires San Quentin-style punishment.

One can easily imagine being on a jury and becoming so outraged at a criminal's behavior that one *would* in fact vote to subject the criminal to something approaching San Quentin-style punishment—or even worse. For that reason, it should not be allowed. Such punishment simply should not be an option. We should not let moments of outrage outweigh rational reflection on such matters.

San Quentin-style prisons should not exist. They should be replaced through a combination of decriminalization policies, decarceration strategies,⁸⁵ and fortresses that involve exclusion rather than punishment or imprisonment—much as is the ideal in present day France and Germany. Even Hegel himself says, “With the progress of education . . . attitudes toward crime become more lenient, and punishments today are not nearly so harsh as they were a hundred years ago.”⁸⁶

At any rate, Hegel's theory of punishment shows us, more clearly than do other theories, that it is wrong to punish. If we act on the

same principle the criminal did, thinking this will justify punishment, if we subsume the criminal under the criminal's own law, then punishment bases itself upon a *false* principle, the very principle that made the criminal a criminal and the crime a crime.

If punishment means acting on the criminal's principle, then we have no right to punish. We do have a right to exclude criminals, and putting criminals in country club prisons or fortresses might qualify, or could be adjusted to qualify, as exclusion.

Moreover, Hegel's theory of punishment shows us *why* punishment is wrong. If acting on a certain principle constitutes a crime and makes you a criminal, then for us to impose that same principle on the criminal at least raises the question of whether *we* have committed a crime.⁸⁷ It at least raises the question of whether punishment is wrong. And it certainly shows us that we have not established a right to punish.

I seriously doubt that we can establish a right to punish, but all that has been shown here is that Hegel has not established such a right. Most other theories of punishment do not really take seriously the need to prove that we have a right to punish. But then this chapter has not proven that they cannot prove it. Since this is a book on Hegel, not on punishment, that task, together with those mentioned earlier, will be left aside.⁸⁸

Even more sense can be made of Hegel's theory of punishment if we recall that it, and, indeed, the whole chapter on Abstract Right, must be understood as embedded in spirit, though we have abstracted ourselves from spirit in this early part of the *Philosophy of Right*. A people's concept of right (which would include their concept of crime and of punishment) is the expression and development of their spirit, something constituted by a complex process of recognition that took place bit by bit over a long period of time. These rights carry the "authority of millennia . . . [t]he whole of mankind has labored upon them. . . ."⁸⁹

If we understand spirit, we can better appreciate the need to annul crime. One can think of spirit as analogous to the character of an individual. If an individual commits a serious crime, and certainly if the individual continues to commit such crime, the individual's character will be shaped accordingly. Crime will erode the criminal's character. To counteract this, the criminal would have to recognize the crime as a crime and reject it—if the criminal's character were to be rebuilt. This is no mere abstraction. There is an empirical dimension to character and its development.

It is much the same with spirit. If someone commits a crime, we must respond. If we do nothing, if we ignore it, if we laugh it off, the crime will embed itself in our spirit. It will be recognized, it will be established, it will become actual as a part of our spirit. And our spirit will erode. The crime must be publicly recognized as a crime. It must be stamped as crime and rejected. It must be denied a place in our spirit. It must be annulled, erased, eliminated. All of this is in complete agreement with Hegel. It is just that, as has been argued above, punishment, let alone San Quentin-style punishment, is not necessary to annul crime and restore spirit. In fact, it can now be added that the infliction of San Quentin-style punishment itself is a serious erosion of our spirit that we should begin to annul.

Hegel ends the chapter on Abstract Right by saying that the overcoming of crime began historically as revenge. What we must have in the modern state, however, is an overcoming of crime freed of the subjective interest and contingent power involved in revenge. We need a *punitive* justice rather than an *avenging* justice, that is, we need a will that, while particular and subjective, wills the universal as such. And thus, Hegel says, *Moralität* has emerged.⁹⁰

Moralität

The Right of Subjectivity

In moving past Abstract Right, we do not immediately move to the realization, let alone the institutionalization, of right in the external world. That must wait until the sections dealing with *Sittlichkeit*. Here, in “Part Two: *Moralität*,” we instead move further into the subject, where we are concerned with intention, motive, and the right of subjectivity. As Pelczynski suggests, Abstract Right was indifferent to motives or intentions and merely required external conformity to law. *Moralität* requires subjective judgment, moral intention, and conscience.¹

Moreover, Abstract Right contained only prohibitions. In *Moralität* the determination of my will is positive—it “entails the production or alteration of something existent.”² *Moralität* is the standpoint of subjective will and thus it is the standpoint of the ought or of demand. Hegel says that it “should be thought of as sheer restless activity which cannot yet arrive at something *that is*.” That will only be achieved in *Sittlichkeit*.³

Hegel regularly refers to “Morality” as a “standpoint” or a “point of view.” Williams suggests that Hegel does not give us “a moral doctrine so much as an account of what morality is, its strengths and limitations. . . .”⁴ In the section on *Moralität*, we are trying to understand the place of morality and its relation to the whole of right. And we are especially trying to understand morality’s deficiencies. We do not assume that morality as it stands can make good on its claims. *Moralität* gives us only a standpoint, a narrow and limited point of view, something very much short of the totality of what is right. To get to the latter, we will have to go beyond *Moralität*.

In Abstract Right, the person wanted an external thing—property. In *Moralität*, the subject wants not just an external thing—it is concerned

with *itself*. Subjectivity adds something that has been missing, something necessary, if we are to achieve a fuller realization of morality and freedom. In Abstract Right, it made no difference what one's intention was. We now recognize that human beings expect to be judged in accordance with their motives, intentions, and purposes, that is, in accordance with their self-determination. The worth of a human being is measured by such inwardness. The point of view of morality is that of this inner freedom.⁵

In discussing the moral point of view, Hegel continuously refers to what he calls the right of subjective will or the right of subjectivity. This means that "the will can *recognize* something or *be* something only insofar as that thing is *its own*, and insofar as the will is present to itself in it as subjectivity."⁶ By contrast, Hegel says that uncivilized people let everything be dictated to them by force or by natural conditions. So also, children have no moral will but allow themselves to be determined by their parents.⁷ Whereas, "my act should be recognized only in so far as it was inwardly determined by me as my purpose and intention. Only what was already present in my subjective will do I recognize as mine in that will's expression. . . ."⁸ For an act to be a moral act, it must carry out the purpose of a subjective will.⁹

The right of a subjective will also implies that whatever this will is to recognize as valid should be perceived by it as good. The subjective will has worth and dignity only insofar as its insight and intention are in conformity with the good. Insight should be based on good reasons and should be convinced by them. It ought to make this good its end and fulfill it. Insight, however, is equally capable of being true as of being mere opinion and error. The will is not by nature good, but can become so only by its own efforts.¹⁰

Another dimension of the right of subjectivity is that human beings have a right to act in support of what interests them. The satisfaction of one's needs, inclinations, and passions produces welfare or happiness. There is nothing degrading in this. It is a right and a duty to promote one's well-being, as long as it does not conflict with the right or the ethical. The individual has a right to find satisfaction in its deeds. The individual need not merely "Do with repugnance what duty commands."¹¹ As Hegel puts it:

The right of the subject's *particularity* to find satisfaction, or—to put it differently—the right of *subjective freedom*, is the pivotal and focal point in the difference between *antiquity* and the

modern age. This right, in its infinity, is expressed in Christianity, and it has become the universal and actual principle of a new form of the world. Its more specific shapes include love, the romantic, the eternal salvation of the individual as an end, etc.; then there are morality and conscience. . . .¹²

A corollary of such subjectivity is that the inner dimension of the individual is inaccessible to others.¹³ Hegel objects to any attempt to use this inner dimension either to debase the great deeds of individuals or to imagine a moral intention behind the wrong actions of individuals,¹⁴

What the subject *is*, is *the series of its actions*. If these are a series of worthless productions, then the subjectivity of volition is likewise worthless; and conversely, if the series of the individual's deeds are of a substantial nature, then so also is his inner will.¹⁵

The subject *is* its actions. They are not to be undone by appeal to a hidden inner dimension. Moreover, consequences belong to the action as an integral part of it. The maxim that enjoins us to disregard consequences as well as the one that enjoins us to judge actions by their consequences as the yardstick of the right and the good are both products of the abstract understanding. Insofar as the consequences are the proper and immanent shape of the action, they manifest its nature and are nothing other than the action itself. Of course, consequences also include external and contingent aspects that have nothing to do with the nature of the action itself.¹⁶ I can be held responsible for whatever was contained in my purpose.¹⁷ I am responsible for a deed only insofar as I have knowledge of it.¹⁸

The ultimate end of things is the good.¹⁹ The good, Hegel says, is related to the subject as what is essential to its will—that is, as the will's obligation or duty. "The merit and exalted viewpoint of Kant's moral philosophy are that it has emphasized the significance of duty."²⁰ Hegel's treatment of morality is Kantian. He starts with Kant, builds upon him, and wants to go beyond him. He does not simply reject Kant or dismiss him, but he does think Kantian morality is insufficient. It is a viewpoint. It is not the highest viewpoint, the all-encompassing viewpoint, but it is an important viewpoint. From this viewpoint, it is a "*duty* for the agent who *ought* to have *insight* into the *good*, [to] make it his *intention*

and bring it about by his activity.”²¹ The subjective will has worth and dignity only so far as its insight and intention are in conformity with the good.²² I ought to determine myself in accord with the good and actualize the good within myself.²³ The good is the absolute and ultimate end of the world.²⁴

Nevertheless, as we have already seen, insight is equally capable of being true as of being in error.²⁵ After all, there are many goods, many duties. They ought to stand in harmony, but they can collide.²⁶ “The good is thus reduced to the level of a mere ‘may happen’ for the agent” who, after all, can “decide on something opposite to the good. . . .”²⁷ It becomes a matter of chance whether or not the good is realized. The good does not yet have its determination within itself. The good here is still “burdened with the ought.”²⁸

The Categorical Imperative

The good, Hegel says, is related to the subject as what is essential to its will. It is the universal, abstract essentiality of the will—its duty. But if I know nothing more than that the good is my duty, I have nothing more than an abstraction. I must do my duty for duty’s sake, but every act requires a particular content and a determinate aim. Duty as an abstraction contains nothing of the kind. The question arises then: what is my duty?²⁹

So far, Hegel has largely agreed with Kantian *Moralität*, but at this point he begins to differ. Hegel does not think the categorical imperative, the very heart of Kantian *Moralität*, is capable of doing what is claimed on its behalf. Kant says, “There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law.*” And Kant suggests that “all imperatives of duty can be derived from this single imperative as from their principle. . . .”³⁰ He also says that with the categorical imperative in hand, “common human reason . . . knows very well how to distinguish in every case that comes up what is good and what is evil, what is in conformity with duty or contrary to duty. . . .”³¹ Hegel, for his part, does not agree. The categorical imperative alone, he argues, cannot tell us our duties. For that, *Sittlichkeit* would also be required. In §135R of the *Philosophy of Right*, Hegel writes:

However essential it may be to emphasize the pure and unconditional self-determination of the will as the root of duty . . . to cling on to a merely moral [*moralischen*] point of view without making the transition to the concept of ethics [*Sittlichkeit*] reduces this gain to an *empty formalism*, and moral science to an empty rhetoric of *duty for duty's sake*. From this point of view, no immanent theory of duties is possible. One may indeed bring in material *from outside* and thereby arrive at *particular* duties, but it is impossible to make the transition to the determination of particular duties from the above determination of duty as *absence of contradiction*, as *formal correspondence with itself* . . . and even if such a particular content for action is taken into consideration, there is no criterion within that principle for deciding whether or not this content is a duty. On the contrary, it is possible to justify any wrong or immoral mode of action by this means.—Kant's further form—the capacity of an action to be envisaged as a *universal* maxim—does yield a more *concrete* representation . . . of the situation in question, but it does not in itself . . . contain any principle apart from formal identity and that absence of contradiction already referred to.—The fact that *no property* is present is in itself . . . no more contradictory than is the non-existence of this or that individual people, family, etc., or the complete *absence of human life*. But if it is already established and presupposed that property and human life should exist and be respected, then it is a contradiction to commit theft or murder; a contradiction must be a contradiction with something, that is, with a content which is already fundamentally present as an established principle.³²

This passage is almost completely misunderstood by many of Hegel's critics.³³ To start with one of the worst, M. G. Singer writes,

Hegel . . . seems to realize that if everyone stole, whenever and whatever he pleased, there would be no such thing as property and hence the purposes of stealing would be made impossible. . . . Yet [Hegel] seems utterly confused as to why it would therefore be wrong to steal. . . . Kant's point . . . is

a relatively simple one, which is perhaps why the profundities of Hegel are so far from the mark. It could not be willed to be a universal law that everyone could steal whenever he wished to, for if everyone stole whenever he wished to, or took for his own anything he happened to want, there would be no property and hence nothing to steal—there would be nothing he could call his own. Stealing presupposes that there is such a thing as property—something to be stolen. . . .³⁴

Singer seems to be implying that Hegel is not sure that stealing is wrong—that Hegel is confused here about the difference between right and wrong. Hegel, of course, knows the difference quite well; he just thinks Kant cannot *explain* the difference philosophically—he cannot *derive* our duties, as he claims he can.³⁵

Moreover, as I have argued elsewhere, in the last sentence of the passage just quoted, which is supposed to undermine Hegel, Singer in effect concedes Hegel's point against Kant. Hegel holds that in formulating a maxim the Kantian *presupposes* a certain form of property as right and only in this way will the principle of universalization work. Without knowing what sort of property is right—which universalization alone will not tell us—we cannot know, for example, what would constitute an act of theft and what would not.³⁶

Suppose I approach a fruit stand, pocket an apple without putting down any money, and walk off. How do I tell whether or not that was an act of theft? Simply asking whether the maxim can be universalized will not tell me. If I pocket the apple in a market economy with private property, the act was theft. If I do so in a communist society based upon the principle “to each according to need,” the act was not theft. A system of communism, Hegel insists, is as universalizable as a system of private property. One is as universalizable as the other.³⁷ Universalizability will not give us the answer. We must have a world with content given to us—either private property or communal property must be given as right before we can go on to decide what constitutes an act of theft. We need *Sittlichkeit*, that is, settled and given customs, traditions, and practices for morality to be possible.³⁸

To take another example: if I make a promise and then go back on it, Kant would hold that I have contradicted myself and that my action was not moral. Going back on one's promise is an especially clear case of self-contradiction. But are such contradictions always immoral? Suppose I

promise to do something that I subsequently come to realize is immoral, and so go back on the promise. Here, I would contradict myself, but I would also refuse to act immorally. My act might even be moral—if my refusal was *for the sake of* the moral law. It is true that I do not keep my promise, but I discovered it was a promise to act immorally. Contradiction cannot be identified with immorality. Contradiction alone will not decide the morality of the act. If I contradict an immoral promise, I do contradict myself, but I do not act immorally. I must first know what is right. Hegel thinks a world of *Sittlichkeit* must give me what is right. Only then can I know that in contradicting it I have acted immorally. Whether I do anything immoral depends entirely on whether or not I contradict a moral principle. Contradiction alone is insufficient to decide the morality of an act.

Thus, Walsh is correct in arguing that all Kant shows us is that we cannot consistently accept both the institution of promise-keeping and the intention not to carry out promises. That would involve self-contradiction. Kant does show us this. What Kant has *not* shown us, however, is that a world without promises is morally inferior to one with promises. We all think that it is. We all assume that it is. But that is just the problem. Kant merely *assumes* that it is right to keep promises. His job, however, is to *prove* to us that it is a duty to keep promises. That is what his universalization test is supposed to *demonstrate* to us.³⁹ Kant claims, we have seen, that he can derive *all* of our duties and that he can do so in *every* case that comes up.⁴⁰

Singer makes the mistaken claim that for Hegel the categorical imperative is empty and contentless—in the sense that: “Hegel assumes that the categorical imperative is supposed to be applied in a vacuum . . . that Kant’s ethics is an ‘empty formalism.’” Hegel, according to Singer, does not see that if “someone proposes to adopt a certain maxim, or to act in a certain way in certain circumstances in order to achieve a certain purpose, then we . . . ‘already [have] a content,’ to which the categorical imperative can be applied.”⁴¹

Singer, as I have argued elsewhere, *fundamentally* misunderstands Hegel here. Hegel is not denying that the categorical imperative has a content in the way that Singer understands it. Hegel clearly sees and accepts, *just as Singer does*, that in formulating a maxim we take up a content. Hegel says explicitly in the *Phenomenology* that what we have is a “standard for deciding whether a content is capable of being a law or not,” and he goes on to talk about content several times on the following

page.⁴² Furthermore, in the passage quoted above from the *Philosophy of Right* §135R, Hegel even says that one “may indeed bring in material *from outside* and thereby arrive at *particular* duties. . . .”⁴³ In other words, we *can* arrive at duties—if we bring in content from outside.

Singer’s mistake, I suggest, stems from misinterpreting the following passage from the *Philosophy of Right*:

For the proposition ‘Consider whether your maxim can be asserted as a universal principle’ would be all very well if we already had determinate principles concerning how to act. In other words, if we demand of a principle that it should also be able to serve as the determinant of a universal legislation, this presupposes that it already has a content, and if this content were present, it would be easy to apply the principle.⁴⁴

Singer takes this passage to be saying that we *do not* have a content—that the categorical imperative is contentless, and thus will not work. But, as I have argued elsewhere, that is not what the passage is saying. It is saying that *for* the categorical imperative to work we must be *given* a content—in the sense of a determinate principle of conduct.⁴⁵ In other words, we have to have given to us, for example, that private property is right. Once we have this, Hegel is saying, then the categorical imperative will have no difficulty in telling us that walking off with the apple from the fruit stand was theft. Hegel is claiming that the categorical imperative will not work without content. Where does the content come from? It is not generated out of the categorical imperative itself. It must be given to us. Private property must be given as right in our life-world. Only then can we see that what we did at the fruit stand was theft. Hegel makes this point very clearly in the long passage already quoted above from the *Philosophy of Right* §135R:

The fact that *no property* is present is in itself . . . no more contradictory than is the non-existence of this or that individual people, family, etc., or the complete *absence of human life*. But if it is already established and presupposed that property and human life should exist and be respected, then it is a contradiction to commit theft or murder; a contradiction must be a contradiction with something, that is,

with a content which is already fundamentally present as an established principle.⁴⁶

Hegel's argument against Kant, then, is not that the categorical imperative is contentless—understood in Singer sense. Hegel, just like Singer, thinks the categorical imperative takes up its content. Hegel's argument is that for Kant the categorical imperative takes up its content *uncritically*.⁴⁷ The Kantian formulating a maxim concerning theft assumes that private property is given as right. As Hegel puts it in the *Phenomenology*,

Laws are . . . *tested*; and for the consciousness which tests them they are *already* given. It takes up their *content* simply as it is, without concerning itself . . . with the particularity and contingency inherent in its reality . . . its attitude towards it is just as uncomplicated as is its being a criterion for testing it.⁴⁸

This testing consciousness, in taking up its content, *assumes* the value of private property uncritically. That is to say that it has not established—has not *proven*—the value of private property. It does not *know* that private property is right. It merely *assumes* what in Hegel's view must be *given* to us as a determinate principle. Private property must be given to us as right if the categorical imperative is to work. Only then could we have a “contradiction with something, that is, with a content which is already fundamentally present as an established principle.”⁴⁹

This is especially clear in the *Natural Law* essay, where Hegel takes up one of Kant's examples:

I ask whether the maxim that I should increase my wealth by all reliable means can count as a universal practical law if such a means should present itself to me in the shape of a deposit [with which I am entrusted]. The content of this maxim should thus be ‘that anyone may deny having received a deposit if no one can prove that he did so.’ This question supplies its own answer [according to Kant], because ‘such a principle, as a law, would destroy itself, since its effect would be that no deposits would be made.’⁵⁰

Notice here that Hegel understands quite clearly Kant's procedure for testing maxims. I emphasize this because many of Hegel's readers seem unaware of it. Notice further that Hegel sees quite clearly that this particular maxim, if formulated as a universal law, would destroy itself, because no deposits would be made. This too is something many of Hegel's readers fail to see. What then is Hegel's response? He goes on in the next sentence to say: "But what contradiction is there in no deposits being made?"⁵¹ In other words, all Kant has shown is that a general practice of denying the receipt of deposits would destroy the existing system of deposits. Kant *has* shown that. Moreover, Hegel *agrees* that Kant has shown that. In that respect, Kant's testing procedure *works* just fine. Many readers seem entirely unaware that this is Hegel's view. They think Hegel would deny this. Hegel does not—he accepts it. Nevertheless, this is not enough. Kant's testing procedure does not get us where we need to go. Kant's testing procedure tells us nothing about whether the existing system of deposits is right. The fact that a general practice of denying the receipt of deposits would destroy the existing system of deposits tells us that we have a contradiction with the existing system of deposits, but it tells us nothing whatsoever about whether the existing system of deposits is *right*. Rather, Kant just *assumes* it is. Kant assumes something that needs to be established. On the other hand, if the existing system of deposits *were* given to us as right, if we knew that, then it is clear that to deny having received deposits would destroy a system that is right, and thus we would have a "contradiction with something, that is, with a content which is already fundamentally present as an established principle."⁵² And we would know that the act was wrong.

Korsgaard also misunderstands Hegel here. She writes:

The person who tries to will the universalization of this maxim is not only thereby willing a situation in which practices like deposits and promises do not exist. He is also willing that they do exist, precisely because he is willing to *use* them to achieve his ends. The man who wills the universalization of the false promise, for example, is also willing to use a false promise to get the money. But he cannot rationally will to use a promise to achieve his end at the same time that he wills a situation in which promises will not be accepted, because if his promise is not accepted it is not a means to achieving his end.⁵³

In all of this Korsgaard is perfectly correct, but she does not seem to realize that in the *Natural Law* essay Hegel shows that he is fully aware that this is Kant's position. Hegel quite clearly holds that Kant *has* shown us that we cannot consistently will a system of deposits and at the same time cheat on deposits. We cannot consistently will that a system of deposits both does and does not exist. We cannot consistently will that a practice exists so that we can violate it. Hegel would *fully* agree with Korsgaard here.⁵⁴ Nevertheless, Kant still has not established whether or not a system of deposits (or of private property) is right. And Korsgaard simply ignores this point. She seems to think it enough to know that we contradict ourselves in willing a situation in which deposits would not exist while at the same time willing that they do exist. But that tells us nothing about whether the existing system of deposits is right, which is what we need to know, because only then can we know that in contradicting it we contradict something that is right.

A different kind of example might make this even clearer. Suppose that, living in the South in 1820, I seek employment with a slave trader, but then I make it my maxim to free my employer's slaves whenever I can do so without being caught. To will the universalization of my maxim would be to will the destruction of the existing system of slavery. We would thus have a contradiction between my maxim and an existing practice. That in itself, however, would tell me nothing one way or the other about whether the existing practice was right. Thus, it would not tell me whether I had done wrong in contradicting it. To hold that I had done wrong would require that I contradict an existing practice that was right.

So also, as with Korsgaard's example, I would be willing a maxim (freeing slaves) whose universalization would mean that the practice in question (slavery) would not exist, while at the same time engaging in that very practice to gain a livelihood from it. I would be engaging in a practice that secures my livelihood and at the same time taking advantage of that practice to achieve ends that if universalized would mean the practice would not exist. I would be willing that the practice both exist and not exist. Again, Korsgaard is quite correct in holding that I would be contradicting myself. But again that does not tell me whether or not the practice of slavery is right. And to know whether I have done wrong, I must know whether or not I have contradicted something that is right. If the practice of slavery is right, then I have acted immorally in freeing my employer's slaves. But if the practice of

slavery is wrong, then, instead, I acted immorally in working for a slave trader in the first place. And so, again, I must know whether or not the existing practice of slavery is right. Only then can I decide whether in contradicting it I have done wrong. Moreover, only then can I decide *what* it was that was wrong.

I. Geiger, on the other hand, moves in a very different direction than did Singer. Geiger agrees with Hegel that we cannot derive moral duties from the universal law formulation of the categorical imperative alone. And despite the fact that Kant suggests that “all imperatives of duty can be derived from this single imperative as from their principle,” Geiger wants to deny that Kant ever really intended to derive duties from this single imperative in the first place.⁵⁵

Geiger claims that agents, for Kant, have common, everyday moral knowledge such that they already know their duties *before* and *without* putting their intentions to any universalization test. The universalization test, he suggests, should be understood as presupposing “a substantive conception of moral value.”⁵⁶

This is precisely what Hegel thinks Kant needs. Hegel argues that Kant brings in material from outside, and that by doing so it is possible to arrive at our duties. It is just that Hegel thinks Kant merely assumes this material uncritically, whereas, the material must be given to us, it must be proven, it must be known.⁵⁷ Geiger is claiming that, for Kant, it is known.

To agree with Geiger’s reading of Kant, we would have to accept that the common everyday moral knowledge of agents can tell them, before and without putting their intentions to any universalization test, whether, for example, capitalism or communism is right. Hegel would agree that this is exactly what is needed. But how could Kant give us this knowledge, establish it, ground it?

Geiger argues that before appealing to any universalization test, we already know that our “universal duty, say, of truthfulness or honesty” would be “contradicted by a deceitful promise to return a loan.”⁵⁸ Hegel would agree, at least with the notion that “a contradiction must be a contradiction with something.” If we already know that lying and dishonesty are wrong, then it certainly would be a contradiction to make a deceitful promise. It is just that Hegel does not think that Kant can tell us how we gain this moral knowledge that precedes any universalization test. He thinks Kant just assumes it. Uncritically.

Geiger, however, is correct at least in holding that Kant *thinks* we have this common moral knowledge that precedes any universalization

test. Indeed, Kant often refers to such knowledge and he even entitles section I of the *Groundwork*, “Transition from Common Rational to Philosophic Moral Cognition.”⁵⁹ Where could such common rational moral knowledge come from? As far as I can see, to explain and establish such knowledge would require a theory of *Sittlichkeit*, and indeed, when Geiger describes this knowledge it sounds very much like *Sittlichkeit*.⁶⁰ Herman, in describing such common moral knowledge, which she refers to as “rules of moral salience,” makes it sound even more like *Sittlichkeit*.⁶¹ This would imply that, even for these contemporary Kantians, Kant would seem to need something like a theory of *Sittlichkeit*.⁶² And insofar as elements of *Sittlichkeit* could actually be found in Kant’s thought, then to that degree Kant’s ethical theory would turn out to be the same as Hegel’s, and thus the criticism that Hegel had been aiming against Kant would still be correct, except that it would not be correct *about Kant*—because Kant would already be holding Hegel’s position, at least to some extent.⁶³ Though Kant, of course, would have to develop his theory of *Sittlichkeit* much further than he has.

If, on the other hand, we were to reject a Kantian theory of *Sittlichkeit*, either because we do not think we can find it in Kant’s texts, or because we think Kant would consider it heteronomous (due to the emphasis it puts on custom, tradition, and habit⁶⁴), then how could we be sure this common moral knowledge that precedes any universalization test was *knowledge*, that is, that what it gives us is *right*? The only way to determine this, it would seem, would be to subject it to a universalization test. This is Herman’s view.⁶⁵ If we accept this, there would still be the problem, as we have seen, that “a contradiction must be a contradiction with something.” So to decide whether or not one bit of pre-philosophical common moral knowledge could pass the universalization test would require that we bring to bear another second bit of pre-philosophical common moral knowledge so as to see whether or not we had a “contradiction with something.” But then we would have to be sure that that second bit of pre-philosophical common moral knowledge was *knowledge*. And to do that, we would have to test it. And we would have to do that in the very same way, which would require that we bring in even a third bit of pre-philosophical common moral knowledge so as to see whether or not we had a “contradiction with something.” In short, we would have an endless regress on our hands.

At any rate, as I have argued elsewhere, Hegel is not out to get rid of the categorical imperative. He is just claiming that a certain content must be given as right for it to work, a content whose rightness he

thinks Kant naïvely presupposes. Hegel is trying to drive us toward *Sittlichkeit*—which will give us this content. Moreover, Hegel is not out to get rid of universalizability. In Hegel's view, universalizability is necessary for morality; it is just that it does not *amount* to morality. Acting on a categorical imperative—insofar as that means acting merely on what reason tells us is universalizable—is not enough to be moral. As Hegel puts it, something is not right because it is noncontradictory, “it is right because it is what is right.”⁶⁶ Again, we must be given what is right. Only by acting on a universalizable principle that accords with what is given as right can we know we are acting rightly.

For Kant, in considering any action, we take up a particular content, formulate it as a maxim, and ask ourselves if the maxim can be universalized. To be moral, we must not act for the content—our desire for the content must not be what determines our act. That would be heteronomy. We must abstract from the content. We must act on a principle.⁶⁷ The moral law must determine the action. The form, not the content, must determine our action.

In this sense the categorical imperative is contentless—and must be so if it is to be moral. If it is not contentless, if it does not abstract from the content, it will be heteronomous. And the categorical imperative, practical reason, cannot itself give us the content. It takes up content from outside and tests it.⁶⁸

Wood gives us a more complex argument in defense of Kant and against Hegel. Wood, unlike Singer, correctly understands Hegel and admits that “one cannot blame Hegel . . . for thinking that the Kantian moral principle is empty and that no practical conclusions can be derived from it unless some actual laws are introduced from outside to provide it with content.” Wood thinks Hegel can only be faulted for concluding prematurely.⁶⁹ He thinks that, “Hegel attended exclusively to the Formula of Universal Law, ignoring other formulations, which are more adequate statements of the principle.”⁷⁰ The Universal Law Formulation is: “*act only in accordance with that maxim through which you can at the same time will that it become a universal law.*”⁷¹ Wood concedes a great deal to Hegel's argument against Kant. Wood thinks that the Universal Law Formulation of the categorical imperative is a provisional and even defective formulation of the moral law.⁷² Wood even concedes to Hegel that the Universal Law Formulation is “incapable of disqualifying many obviously immoral maxims.”⁷³

Wood argues, however, that Kant's test never involves merely the claim that an impermissible maxim, when stated in the form of a universal law, involves a self-contradiction. Rather Kant's arguments, while they do apply an a priori law, "always rest mainly on claims about contingent, empirical matters of fact (as we would naturally expect in moral arguments of any kind about particular examples)."⁷⁴ Here Wood seems to slip back to Singer's position, to thinking that Hegel's accusation against Kant is that the categorical imperative is contentless (having nothing to do with "contingent, empirical matters of fact"),⁷⁵ rather than that the content is taken up from outside and uncritically assumed—despite the fact that Wood got it right in the passage quoted at the beginning of the previous paragraph. At any rate, Hegel's view, we have seen, is that one *can* arrive at particular duties *if* one brings in material from outside.⁷⁶ For Hegel, as long as we bring in established principles from outside, Kant's test *does* give us a "standard for deciding whether a content is capable of being a law or not. . . ."⁷⁷

Wood also claims that Hegel misconstrues the moral issue at stake in Kant's deposit example, which, Wood argues, "is the sanctity not of private property but of personal trust."⁷⁸ But it seems to me that Wood misconstrues *Hegel's* point. Hegel, in the *Natural Law* essay, concedes that Kant's test does exactly what Kant says it will do. It shows that you cannot consistently hold to a system of deposits and at the same time deny having received deposits⁷⁹—that is, you cannot consistently hold to a system of deposits and at the same time regularly violate the trust implicit in such a system. Hegel has no problem with this—he admits that it works just fine. Nevertheless, Kant's test fails entirely to tell us whether a system of deposits or its absence is right.⁸⁰ And if it cannot tell us that, then it cannot tell us whether or not we should honor deposits. Rather, what Kant does, Hegel thinks, is to *assume* that a system of deposits is right, such that universalizing the denial of deposits would destroy such a system. And, indeed Hegel thinks that Kant's test only gives results if the contradiction is a "contradiction with something." If we know that a system of deposits is right, if we have that given to us, then it is quite clear that to deny having received deposits would destroy the system, a system that is right, and thus would be wrong. That all works. It is perfectly fine. And Hegel admits as much—as *long as we know that the system of deposits is right*. But how do we know that? Well, Kant just assumes it. He does not prove it. A system of deposits

is universalizable. But so is a system without deposits. Private property is universalizable. But so is a system without private property. And so, when I pick up that apple from the fruit stand, I still do not know whether I have committed an act of theft or merely taken my share in accordance with need.

Many Kantians would disagree with this. They would insist that agents simply give themselves the content. Agents just assume a content and then ask whether or not it can pass the universalization test.⁸¹ In other words, such content is not understood to be given as right in our life-world by a theory of *Sittlichkeit*, nor is there any claim that this content amounts to pre-philosophical common moral knowledge so that we end up with the endless regress described above. Rather, the agent simply introduces an assumption into the procedure. Thus the universalization test would not show us, as I put it above, that a general practice of denying the receipt of deposits would destroy the *existing system of deposits*. Rather, the universalization test would show us, say, that a general practice of denying the receipt of deposits would contradict whatever system of deposits the agent has *introduced as an assumption* (no matter what system exists in the life-world). Here, it is true, we would have a contradiction with something—namely, with the assumption introduced by the agent. But for Hegel we need to have a contradiction with a determinate principle—that is, with something that is *right*. If the assumption introduced by the agent is right, then to contradict it *would* be immoral. But how do we know whether or not the agent's assumption is right? If we do not know whether or not the assumption is right, the universalization test will tell us whether or not we have a contradiction with the assumption, but it will not tell us whether or not we have a contradiction with what is right. And so, when I pick up that apple from the fruit stand, I still do not know whether or not I have committed an act of theft.

One might think this problem easily overcome simply by insisting that maxims, as some Kantians hold, are to be identified with an agent's specific intentions in acting.⁸² So, when I pocket the apple, since I would know whether I am living in a capitalist or a communist society, one or the other would be reflected in my intentions and thus included in my maxim. Therefore it would be quite clear whether or not my pocketing the apple would be an act of theft.

This *definitely* will not work. When Kant's gives us examples, they are very often *not* given from a first-person perspective. Kant's actual

question is not, for example, whether *I* may borrow money when I know I cannot repay it. Rather, Kant asks whether “another,” a person in the abstract, may do so.⁸³ In other words, in Kant’s example it is *we* who form a maxim for a *third* person, not simply for ourselves, and we would not know whether that third person lives in a capitalist or a communist society. Of course, we could form two different maxims, the first for a capitalist society and the second for a communist society, but that would not tell us which maxim would be the right one to use when a particular person in a specific society actually pockets a specific apple. Furthermore, it would not help us even if we did know whether the agent lives in a capitalist or a communist society, just as it would be irrelevant what specific intentions I would include in the maxim if it were my own maxim, because what we need to know here is whether capitalism or communism is right.

Thus, Hegel thinks there are three possibilities to be considered here: (1) the categorical imperative alone can tell us what our duty is in any situation; (2) we make an uncritical assumption, bring a content in from outside, which together with the categorical imperative can tell us our duty; or (3) we need a theory of *Sittlichkeit* that would actually give us content, for example, that capitalism or communism is right, which together with the categorical imperative can tell us our duty. Hegel is arguing against (1), against (2), and for (3).

At any rate, Wood thinks that Kant himself is aware that the Universal Law Formulation of the categorical imperative, by itself, is not enough to specify or validate universal laws. Wood argues that in the *Groundwork* the content of such laws and their possibility depend upon the *entire* system of formulae.⁸⁴

Wood gives a lengthy and detailed analysis of Kant’s various formulations of the categorical imperative. The upshot is that the test of any maxim is the demand that it “be an *actual* law belonging to an entire *body* of laws.” It is not enough that it can be willed without contradiction to be a universal law. A more stringent test is required: “it would also have to harmonize with all the other universal laws . . . [in] a single system of rational legislation.”⁸⁵

While Wood’s analysis gives us considerable insight into Kant’s treatment of the moral law in its various formulations, it does not seem to me that it overcomes Hegel’s objections. Both private property and communism, one as well as the other, could consistently be parts of single harmonious systems of laws. Private property could be part of a

single harmonious system. But communal property could also be a part of a single harmonious system of laws. No one of the formulations of the categorical imperative, nor a whole harmonious system of rational legislation, would be able to tell us which is right here. Moreover, Kant himself discusses property right in the *Metaphysics of Morals*. The universal principle of right, Kant tells us in that text, is that “Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law.”⁸⁶ It is quite clear that communal property as well as private property would be compatible with this universal principle of right.⁸⁷ And so we still would not know whether or not pocketing that apple from the fruit stand was an act of theft. Going even further, M. Westphal argues that even if we were

able to derive such moral imperatives as *Thou shalt not kill*, *Thou shalt not steal*, and *Thou shalt not commit adultery* . . . this is not enough. *Thou shalt not kill* remains fatally indeterminate until I know whether it precludes all taking of human life or whether it permits abortion, euthanasia, just war, capital punishment, human sacrifice. . . . Similarly, *Thou shalt not steal* becomes sufficiently determinate only when I know whether what rightfully belongs to another is to be defined in terms of pre-Lockean natural law conceptions, Lockean capitalist conceptions, socialist property-is-theft conceptions, or ancient Hebrew Jubilee conceptions. And *Thou shalt not commit adultery* becomes a genuine moral precept only when I know whether it permits or forbids polygyny, polyandry, divorce, or even Plato’s scheme in the *Republic* about how the best and brightest are to breed.⁸⁸

A Kantian system of laws, a full “harmonious system of rational legislation” will not decide between Westphal’s alternatives. Nor would the universal principle of right. Each of the radically different forms of property Westphal lists are incompatible with each other but each would be compatible with its own harmonious system of rational legislation as well as with the universal principle of right. Natural law conceptions would be. Capitalist conceptions would be. Socialist conceptions would be. And so again, if Kant cannot tell us what does and does not constitute an act of theft, he cannot meaningfully tell us *Thou shalt not steal*.

Hegel, however, goes even further. It is his view that the absence of contradiction or the principle of universalization by itself not only cannot determine our duty, but that such tests would allow us “to justify any wrong or immoral mode of action. . . .”⁸⁹ Is Hegel right here? Is it the case that *any* action can be universalized? Isn’t this claim farfetched?

In discussing punishment in chapter 2, we have already seen Hegel claiming that implicit in the action of *any* rational being is that the action is universal in character. Hegel thinks that even the criminal sets down a universal law. If the criminal kills, the criminal’s act in effect declares that it is allowable to kill. The criminal’s act declares that killing is “*right for the criminal himself*.” The criminal establishes a law that the criminal in effect recognizes as valid. Moreover, punishment merely subsumes the criminal under this same law.⁹⁰ This, then, is quite consistent with Hegel’s argument that the universalization test allows one to universalize any wrong or immoral action. Wrongdoers certainly imply so by their actions. But it is not just wrongdoers. The Hegelian state *itself* would apply that very same law to the criminal as punishment. It just subsumes the criminal under the criminal’s own principle. Indeed, it is Hegel’s view that “nothing can be said in language that is not universal.”⁹¹

All human action is universal—moral action as well as criminal action. All human action intends the universal—moral action as well as criminal action.⁹² Such universality tells us that we have a human being, but it does not tell us whether this human being’s action is moral or immoral. A universalizability test alone cannot decide the morality of an action. Universalizability does not amount to morality. This is the same point we have been making all along. To act morally, we must have given to us what is objectively right—only then can we know that in contradicting it we have acted immorally.

Hegel thinks we have lost this objectivity in the modern world. He thinks that, as with Socrates, the Stoics, and others (meaning, I think, Kant), “the tendency to look *inwards* into the self and to know and determine from within the self what is right and good appears in epochs when what is recognized as right and good in actuality and custom is unable to satisfy the better will.”⁹³ For Hegel we need an objective right and good—we need *Sittlichkeit*—which later parts of the *Philosophy of Right* will try to develop for us. Genuine morality means doing what is objectively right, and, as well, that the right exist “as the subject’s own self-determination.”⁹⁴

There is another formulation of the categorical imperative, the formula of humanity; it is: “*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*”⁹⁵ Can this formulation allow us to drive our duties?

Let us assume for a moment that it can. What might Hegel’s response be? He does not discuss this formulation explicitly, but in the passage quoted earlier from §135R of the *Philosophy of Right*, he said,

if it is already established and presupposed that . . . human life should exist and be respected, then it is a contradiction to commit . . . murder; a contradiction must be a contradiction with something, that is, with a content which is already fundamentally present as an established principle.⁹⁶

If it is established that human life should be respected, that is, that it be treated always as an end and never merely as a means, then Hegel admits, and *from the start*, that the universal law formulation of the categorical imperative would work, that it would give us our duty, that it would tell us that it is a contradiction to murder. We would have a contradiction with something—with a determinate content established as right.

Hegel does think, we have seen, that such material must be brought in from outside because there is nothing contradictory about the “non-existence of this or that individual people, family, etc., or the complete *absence of human life*.”⁹⁷ And he thinks that a theory of *Sittlichkeit* would be needed to establish this material brought in from outside.

Can it be argued against Hegel that this material is not brought in from outside? Can it be argued that this material can, after all, be derived from the universal law formulation of the categorical imperative, and that it can be so derived because, as Kant says, the various formulations of the categorical imperative are “only so many formulae of the very same law, and any one of them of itself unites the other two in it”?⁹⁸ In other words, if (as we are assuming) the formula of humanity can establish a duty to respect human life, does that mean that in effect the universal law formulation can establish the same respect (because it is the very same law and unites the other formulation in itself), such that the universal law formulation then *can* generate “a contradiction

with something,” a contradiction between murder and respect for human life, and thus, after all, tell us our duty?

One problem with this, at least, is that it is not how Kant thinks we should proceed. He thinks that we should always “proceed in moral *appraisal* by the strict method and put at its basis the universal formula of the categorical imperative: *act in accordance with a maxim that can at the same time make itself a universal law.*” This would seem to suggest that if we cannot derive respect for humanity from the universal law formulation, we should not expect to be able to do so from the formula of humanity. What we should expect from the latter, Kant suggests, is merely that it can get us “closer to intuition . . . and thereby to feeling” and thus be useful in gaining “access for the moral law.”⁹⁹

What if, then, we just admit that the formula of humanity does, in Hegel’s words, bring in material from outside? The question still remains whether it can from outside provide the universal law formulation with content, an established principle, something right, and thus allow it to arrive at particular duties.

While the formula of humanity tells us always to treat human beings as ends, never merely as means, it is not at all clear that this formulation can allow us to “distinguish in every case that comes up what is good and what is evil, what is in conformity with duty or contrary to duty. . . .”¹⁰⁰ What does it mean never to treat anyone *merely* as a means? Would that, for example, prohibit us from profiting off the labor of others? That would be to treat them as means. But treating people as means is clearly not to be ruled out completely. Working with others as equals would mean that each treats the others as a means to getting the job done. It is treating others *only* or *merely* as means, not at the same time also treating them as ends, that is ruled out. But what does that require of us, a few polite words, a bit of respect, and then we can exploit laborers as we like? How far can we go in *using others as means* without treating them *merely* or *only as means*? To what extent must we treat them as ends and to what extent are we allowed to treat them as means? Kant does not tell us.

Will this formulation of the categorical imperative really tell us what our duty is here? It is pretty obvious that a CEO’s stock options, retirement package, and high salary would be to treat the CEO as an end, not merely as a means. And it would seem pretty obvious that a system of slavery would be an extreme case of treating people as mere

means, not at all as ends.¹⁰¹ But while the formula of humanity may work at the extremes, will it work *everywhere* in between? Will it tell us in *every* “case that comes up what . . . is in conformity with duty or contrary to duty”?¹⁰² If it can tell us that the plantation owner may not enslave people, that that is to treat them as mere means, will it also tell us what their working conditions should be, and what their standing in society in relation to the plantation owner should be, so that they would be treated as ends and not mere means? If not, can it really tell us how we must treat people in order to treat them as ends and not mere means? Can it, for example, tell us what the minimum wage should be? Or whether it is our duty to pay what has recently come to be called a “living wage,” rather than a minimum wage? Or whether that is not even sufficient? Can it tell us whether or not we must give “to each according to need”? It certainly does not seem that the formula of humanity can decide between capitalism or communism any better than the universal law formulation. Freyenhagen argues that the formula of humanity is simply “too general and vague to get to the kind of specific duties and guidance that would be required for actual ethical practice. What it is to respect another person will vary enormously from one age to the next and from one society to the next. . . .”¹⁰³

Wood tries to excuse Kant by arguing that the formula of humanity:

tells us only to act in such a way as to express proper respect for the worth of humanity. Proper expression of respect, however, surely is a contextual matter. . . . Kant holds that every application of a general rule or concept to a particular case involves an act of judgment that eludes formulation in generalizations. . . . The “causistical questions” that Kant appends to the discussion of many ethical duties are mainly intended to raise issues that have no clear or general resolution but are left to individual judgment depending on the particular circumstances. They are “not so much a doctrine about how to *find* something as rather a practice in how to *seek* truth.”¹⁰⁴

Kantians need not apologize for the fact that their principle does not lead to tidy utilitarian calculations. . . . No fundamental moral principle should be seen as directly solving all moral problems (especially controversial ones). Its task is

rather to provide a correct framework within which problems can be raised and discussed.¹⁰⁵

This certainly does not fulfill Kant's promise that with the categorical imperative in hand, we can know "very well how to distinguish in every case that comes up what is good and what is evil, what is in conformity with duty or contrary to duty,"¹⁰⁶ that is, that "all imperatives of duty can be derived from this single imperative as from their principle. . . ."¹⁰⁷ If all we end up with is a framework for discussion, if that is our conclusion, then we should admit that Hegel's arguments against the categorical imperative have not been overcome. Even if Kant might be able to derive some of our duties, he certainly does not seem to be able to tell us how to distinguish our duty in *every* case, nor how to derive *all* imperatives of duty. And so again Hegel's objections would not seem to have been overcome.

Hegel has given serious arguments to the effect that moral laws cannot arise from Kantian *Moralität*. For Hegel, we must move beyond *Moralität* to *Sittlichkeit*. At this point, then, we must begin to say more about *Sittlichkeit*. It will be Hegel's argument, as the *Philosophy of Right* proceeds, that modern *Sittlichkeit* will be superior to *Moralität*. It is not true in his opinion, however, that ancient *Sittlichkeit* was superior to modern *Moralität*. Aristotle, for example, did not know that slavery was wrong, and ancient *Sittlichkeit* was unable to show that it was. It thought slavery was right. Slavery was given as right in the customs, traditions, practices, laws, and institutions of the ancient world. Ancient *Sittlichkeit* had no way to cut through that objectivity and see that slavery was wrong. Richard Taylor asks us to:

imagine Aristotle's reaction if someone were to point to his slaves and say, with a straight face, that each and every one of them is as good a human being as Aristotle himself. I believe one has to dwell on this image for awhile in order to appreciate its absurdity.¹⁰⁸

No doubt that is what Aristotle thought. It is not what we should think. It is not what Hegel would think. For Hegel, "Slavery is unjust in and for itself."¹⁰⁹ Given what Hegel has said so far about Kantian *Moralität*, however, I think we must ask exactly how much better Kant

could do here than Aristotle? If we accept that the second formulation of the categorical imperative, “*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means,*”¹¹⁰ would rule out slavery, would it also rule out serfdom, indentured servitude, wage-slavery, very low wages? Where exactly would it draw the line between treating someone as an end rather than a mere means? If it cannot tell us where that line is to be drawn, has it really told us how we must treat people in order to treat them as ends and not mere means?

Hegel thinks such principles must be given to us. I have repeated this point over and over. What does it mean? What does it mean to hold that moral principles are *given* to us? For divine command theory, God gives us commands. God gives us the moral law. For Aquinas, God’s rationality is embedded in nature such that moral norms are objectively given to our reason.¹¹¹ In both cases, the moral law is objectively given to us and our reason is able to grasp that objectivity. In my reading, Hegel does not believe in this sort of God. What he does believe in is spirit (*Geist*).

As was said in chapter 1, spirit implies a worldview in which a people expresses its aims, aspirations, values, role, significance, meaning, and goals to itself. This people, then, through its activity in the world will embody this spirit in its laws, practices, customs, social and political institutions, ethical life, culture, philosophy, and religion. In this way spirit gets objectified, concretized, institutionalized—it comes to be *given*. As this concretized spirit is recognized by its people, it will animate their passion, activity, and drive.¹¹² A people constructs its spirit. They set its aims, build its institutions, establish its laws. Spirit is not heteronomous. It is their own. At the same time, spirit also constructs this people. It forms their practices, inspires their work, molds their values, gives them meaning, and shapes their culture. In Hegel’s view it is stamped on every aspect of their life. One spirit permeates everything in an age.¹¹³

Spirit gives us the ethical—it gives us *Sittlichkeit*.¹¹⁴ For example, it gives us private property as right and slavery as wrong.¹¹⁵ We do not derive this merely from our own personal rational analysis. Nor do we derive it merely from the customs and traditions of our group. It is given by spirit. Spirit is the historical outcome of reason embedded in our laws, institutions, practices, and so forth. It is given to us, objectively and concretely. Moreover, the universal will have played a significant role in the development of this given. Any principles or practices that are less

than universalizable will sooner or later come into conflict with other principles or practices and drive us to something more universalizable.¹¹⁶ Anything short of the universal, anything that does not apply equally to all, will sooner or later produce conflict and will sooner or later drive us to extend the law—universalize it—to avoid the conflict. We will be driven on toward the universal, the rational, the right.¹¹⁷ Something very much like the categorical imperative is at work historically in spirit. Thus, what spirit gives us as right *will* be universalizable. If not, it will sooner or later be destroyed and be moved toward the universalizable. Moreover, *Moralität*, in the form of a universalizability test, allows us to continually critique spirit as it develops and comes to be given in *Sittlichkeit*. And in doing so it can contribute to the conflict that drives us toward the universal.

At the same time, a Kantian universalizability test, carried out by an individual consciousness, whether or not it can tell us what is right, is certainly not enough alone to *give* us what is right. And the right *must* be *given* to us, we have seen, for a universalizability test to be able to tell us what is right. That is Hegel's view. A great deal more will have to be said as we proceed to explain it more adequately.

Moralität and Freedom

In previous chapters, I argued that for Hegel freedom is to be understood as being with oneself in another, that is, as *Beisichselbstsein in einem Andern*. And I made the claim that in the *Philosophy of Right* freedom as *Beisichselbstsein* is taken up at increasingly complex levels.¹¹⁸ In Abstract Right, it involved the ability of consciousness to abstract from everything external, withdraw, and turn into itself.¹¹⁹ In the simplest way, then, it faced nothing other. It was alone with itself. And the external world that confronted it was posited as its own—as its property.

In *Moralität*, we continue this abstraction from the external, and move within in an even deeper sense.¹²⁰ We move not merely to subjectivity, but to reason, which is most truly ourselves. We must be self-directed by our own reason, and not toward an end external to reason, but toward the rational itself. Indeed, Hegel thinks, "In doing my duty, I am with myself [*bei mir selbst*] and free."¹²¹

Moreover, Hegel thinks that human beings wish to act in support of whatever interests them as their own. The satisfaction of needs, inclinations, passions, and so forth, brings about their well-being or happiness.¹²²

One has a right to make such needs one's end. They accord with reason. In Hegel's view, there is nothing problematic in this. Well-being is a right and a duty.¹²³ Thus, in acting for our well-being, in acting on our interests, in acting for our own, we can be directed by our *own* reason, and not toward an external end, but toward the rational itself. We can be free in the sense of *Beisichselbstsein*, being with oneself.

Nevertheless, for Hegel, we are still buried within subjectivity here. This becomes especially visible in conscience.¹²⁴ Conscience, as Hegel understands it, is the disposition to will what is good. Conscience is the highest access to the good within subjectivity, "*Conscience expresses the absolute entitlement of subjective self-consciousness to know in itself and from itself what right and duty are, and to recognize only what it thus knows as the good. . . .*"¹²⁵ But "*whether what it considers or declares to be good is also actually good, can be recognized only from the content of this supposed good.*" Thus, Hegel says,

The ambiguity associated with conscience therefore consists in the fact that conscience is assumed in advance to signify the identity of subjective knowledge and volition with the true good, and is thus declared and acknowledged to be sacrosanct, while it also claims, as the purely subjective reflection of self-consciousness into itself, the authority . . . which belongs only to that identity itself by virtue of its rational content which is valid in and for itself.¹²⁶

Moralität, which remains subjective, will not get us to this identity with the true good. Only *Sittlichkeit* will be able to do that.¹²⁷ Conscience in its pure inwardness is capable of making into its principle either the universal or its own particularity. Conscience is thus the possibility of turning at any moment to evil.¹²⁸ Freedom as subjectivity, as inwardness, this form of *Beisichselbstsein*, remains a mere ought. We must move beyond such subjectivity. Objective good and subjective conscience need to be integrated into absolute identity.¹²⁹ That the good is the final purpose of the world was the "idea to which Kantian philosophy attained, but got no further." The good "must be actual, must realize itself. . . . This good is accordingly given in Kantian philosophy as an 'ought to be,' but 'ought' as such implies something incomplete. . . ." ¹³⁰

In *Sittlichkeit*, we get beyond a mere "ought," we get beyond a situation in which subjects may or may not know and do the good. The

good is not something that merely ought to be. The “‘ought’ is no less an ‘is.’”¹³¹ It exists. It is embedded in our customs, traditions, institutions, laws, and practices. It educates and cultures us. It forms our values, attitudes, and behavior. It shapes our character and disposition. *Sittlichkeit* “is the good become alive—the good . . . actualized by self-conscious action—while on the other hand self-consciousness has in the ethical realm its absolute foundation and the end which actuates its effort.”¹³²

Sittlichkeit: The Family

Transition from *Moralität* to *Sittlichkeit*

Kantian *Moralität*, we have seen, is not enough for Hegel. Another important reason for this is that moral freedom, for Kant, means that individual subjectivity alone is free. That is, individuals are free insofar as practical reason determines their action. There is no need that individuals realize this moral action. The individual, for Kant, may well meet obstacles to the carrying out of such action without affecting the individual's moral freedom at all:¹

Even if, by a special disfavor of fortune or by the niggardly provision of a stepmotherly nature, this will should wholly lack the capacity to carry out its purpose—if with its greatest efforts it should yet achieve nothing and only the good will were left . . .—then, like a jewel, it would still shine by itself, as something that has its full worth in itself.²

[A]n action from duty has its moral worth *not in the purpose* to be attained by it but in the maxim in accordance with which it is decided upon, and therefore does not depend upon the realization of the object of the action but merely upon the *principle of volition* in accordance with which the action is done without regard for any object of the faculty of desire.³

For Kant, feelings, interests, or inclinations, whether they be obstacles or aids, are not relevant to moral freedom. They need not agree with the action for it to be moral or free. Nor does it matter if they are opposed.⁴

For Hegel, it is not enough merely to know what is moral. It is not even enough merely to will what is moral. Right must be actualized. It must be realized. If not, we cannot be free. We will meet impediments in the world. We will meet frustration. We need *Sittlichkeit*, which is realized only when the objective external world and our feelings fit, agree with, and support the subjective rational freedom of the individual. Laws and institutions, feelings and customs, as well as the rationality of the individual must form a single spiritual unity. *Sittlichkeit* requires: (1) that individuals be self-determined by universal and rational principles, that is, that subjective reason know and act upon what is moral; (2) that rationality have been objectified, that it permeate the laws, institutions, and practices of the state, so that in obeying civil laws we obey the laws of our own reason; and (3) that interests, feelings, and customs have been molded to support and reinforce these rational laws such that in satisfying particular interests we satisfy the universal.

For Hegel, to be free we must encounter an objective world that is not other, not hostile, not a hindrance to subjective reason. The objective world must be rational, such that subjectively rational action meets itself, meets reason, in the world, and thus fits and is reinforced. If right has been actualized, if reason has been realized, if law has been institutionalized, that is to say, if the world has been ordered and arranged rationally, and if this has infused custom, tradition, and practice, then individual subjectivity will not find its world to be an obstacle to its rational action. It will not confront it as an obstruction. Subjective reason will find its world to be a rational arena laid out for its action. It will be a world that will confirm and reinforce the subject. This is how we must understand freedom for Hegel—not merely as a jewel-like will that need “achieve nothing” in the world.

It is certainly true that in the public world, for Kant, “the freedom of choice of each” must be able to “coexist with everyone’s freedom in accordance with a universal law.”⁵ But Hegel demands much more than this. In *Sittlichkeit*, he thinks, we find a single spiritual realm made up of two parts—an individual subjective realm and an objective substantial realm. And each side produces the other. Individual actions and interests give rise to an objective worldly reality that then turns upon the individuals, molds them, and lifts them to universality. The subject does not face the object as a heteronomous other. The object is the outcome of the subject’s own activity, the realization of the subject’s essence, and thus is compatible with the subject’s freedom. The subject is not externally related to the object, but internally related to it as its own:⁶

[*Sittlichkeit*] . . . is the good become alive—the good endowed in self-consciousness with knowing and willing and actualized by self-conscious action—while on the other hand self-consciousness has in the ethical realm its absolute foundation and the end which actuates its effort.⁷

Individuals work on their world through history and transform it to fit themselves, just as the world transforms them so that they conform to it. In confronting their world, individuals meet and discover themselves. For Hegel, they discover their own rationality objectified. This fit between the subjective rationality of the individual and the objective rationality of the world, when it is supported by custom, tradition, and feeling, gives us *Sittlichkeit*.

All subjects, and even cultures, Hegel thinks, have a drive to objectify themselves in the external world⁸ and to recognize themselves in the external object. In the *Aesthetics*, Hegel says that we can see this in something as simple as a child skipping stones across a pond. Children take joy in altering things and see themselves, their own doing, in the alteration. This drive runs throughout our activities, all the way up to art. We alter things in order to strip them of their foreignness. We want to recognize ourselves, our own doing, in the external thing. We lift the external world out of its alien, natural independence. We absorb it into the spiritual and cultural. We recognize ourselves in it and are at home.⁹

I have argued that the *Philosophy of Right* takes up freedom as *Beisichselbstsein in einem Andern*, being with oneself in an other, at increasingly complex levels.¹⁰ In *Abstract Right*, we found that consciousness was able to abstract from everything external, withdraw, and turn into itself.¹¹ It thus faced nothing other. It was alone with itself. And the external world that confronted it was posited as its own—as property.

In *Moralität*, we continued this abstraction from the external, and moved further within—to reason.¹² Freedom required that we be self-directed by our own reason, and not toward an end external to reason, but toward the rational itself. “In doing my duty, I am with myself [*bei mir selbst*] and free.”¹³

Now, in “Part Three: *Sittlichkeit*,” to be with ourselves we no longer have to abstract from the world and turn within. We can be with ourselves, with our own, in the world. And *contra* Kant, we must be if we are to be free. A people’s spirit actualizes itself historically in their laws, institutions, practices, philosophy, religion, and art, so that the world increasingly becomes their own. It is a world that is not alien or

other. We transform what otherwise might be alien into our own self-expression and self-determination. Our own culture is a place where we can be at home and free.

Thus, consciousness would be free, would achieve *Beisichselbstsein*, not only when withdrawn into abstraction, but also out in the world—a world that would no longer be seen as heteronomous. It would be a world at one with reason. Reason could see itself in this world. Reason would no longer find the world an obstacle to reason, but a field laid out for its operation. The world must have been shaped by rational law, such that the rational action of individuals does not meet obstruction in the world. It must fit them and confirm them. Reason must be at home in a rational world. In obeying the laws of our society, we must be obeying the laws of our own reason. Subjective reason recognizes objective reason and is at one with itself. Freedom means to face the world and not find it other. What you confront is yourself—your own rational essence.

We can be free in our world because we have constructed it. We have formed it over a long historical period, and we have been formed by it. We are its expression and it is our expression. As Pippin puts it, I am only subject to laws that I in some sense author and subject myself to. But such legislation does not occur in a single moment. Rather such self-subjection to normative constraint is gradual and historical.¹⁴

Sittlichkeit is found in culture, where it has an objective being of its own, where it is socially constructed within and through our customs, traditions, practices, and public institutions. In spirit it is not just subjective rationality that decides, that establishes what is moral, as for Kant. Things are not moral simply because my rationality finds them to be moral. They are also objectively moral—moral in-themselves. It is not enough that I subjectively take the action to be right. That is necessary, but not sufficient. The action must *be* right. Objectively right.¹⁵ Yet this objective right cannot be something independent of me, outside me, heteronomous.

Such *Sittlichkeit* was first established in the Greek *polis*. Think of the Athenian assembly creating its *own* laws—laws that are shaped by its own customs and traditions, its myths and its gods, and thus are objective, ethical *in-themselves*, for the people they form.¹⁶ Yet this objective moral content is not something other or alien to them.¹⁷ The citizens objectify themselves in their own institutions. They create a common public life that is the outcome of the activity of the individual citizens themselves.

It exists only through their work, recognition, and sacrifice. At the same time it is objectively rooted in their public values, traditions, and laws, as well as their own philosophy, religion, and art. Citizens are willing to serve and to sacrifice for this objective reality, a reality that motivates them, becomes their mission and purpose, and forms and empowers them as a people. This objective reality is not heteronomous. The citizens are not unfree. They see themselves in a world they have constructed; they find this world to be their own; and they are at one with it.¹⁸

Kantian ethics would not accept such *Sittlichkeit*. It would find the objective laws of the ancient world to be heteronomous. Custom and tradition, laws based on religion or mythology, for Kant, are not and could not be forms of rational autonomy.¹⁹ What this completely misses, in Hegel's view, is that the laws of the *polis* were constituted by the cultural and historical action of the citizens themselves and were embedded in their customs, traditions, practices, and feelings such that they were their *own* laws. They had an objective and universal form such that citizens did not see that they had constituted them, but in a meaningful sense they *were*, as Hegel put it in the *Phenomenology*, "the law of every heart."²⁰ As he put it in an even earlier text:

As free men the Greeks and Romans obeyed laws laid down by themselves, obeyed men whom they had themselves appointed to office, waged wars on which they had themselves decided, gave their property, exhausted their passions, and sacrificed their lives by thousands for an end which was their own. They neither learned nor taught [a moral system] but evinced by their actions the moral maxims . . . which they could call their very own. In public as in private and domestic life, every individual was a free man, one who lived by his own laws. The idea (*Idee*) of his country or of his state was the invisible and higher reality for which he strove, which impelled him to effort; it was the final end of *his* world or in his eyes the final end of *the* world, an end which he found manifested in the realities of his daily life or which he himself co-operated in manifesting and maintaining. Confronted by this idea, his own individuality vanished; it was only this idea's maintenance, life and persistence he asked for, and these were things which he himself could make realities.²¹

Only *Sittlichkeit* is capable of bringing together *all* the elements of the ethical: (1) subjective interest, engagement, and passion; (2) all located in a cultural context that we find to be our *own* because it was constructed by us and thus where we are free; which (3) grows out of and is reinforced by custom and tradition, our institutions and our gods, our religion and our philosophy, and thus for us is objective and absolute; and (4) within this context we reflect rationally and establish universal laws. *Sittlichkeit* is a subjective disposition toward what is objectively right.²² In such a context, citizens know and accomplish—they live in and are a part of—the ethical. Ethical life exists, it empowers its citizens, it pervades and is actually played out in their lives and practices. It is not a mere Kantian ought.²³

Moralität, for Hegel, is defective because it is abstract. It cannot tell us our actual duties.²⁴ Only *Sittlichkeit* can do that.²⁵ Hegel thinks, as I have argued, that moral content must be given to us. And it is given to us by spirit.

Spirit implies a worldview in which a people expresses its goals, values, and meaning to itself, and through its action embodies this spirit in its laws, practices, customs, institutions, art, culture, philosophy, and religion. Thus, spirit is objectified and concretized such that it animates this people's will, passion, and activity.²⁶ A people constructs its spirit. They set its aims, build its institutions, and establish its laws. Spirit is their own—it is not heteronomous. At the same time, spirit also constructs this people. It forms their practices, inspires their activity, shapes their values, gives them meaning, and forms their culture. It produces character and disposition. In Hegel's view it is stamped on every aspect of their life. One spirit permeates everything in an age.²⁷

Spirit gives us *Sittlichkeit*—it gives us the ethical.²⁸ It gives us moral content. We do not derive the ethical just from our own individual rational analysis. It is given by spirit, which is the historical outcome of reason embedded in our laws, practices, and institutions. And the universal will have been fundamental in the development of this given. As we have said, any principles or practices that are less than universalizable will produce conflict and sooner or later push us toward more universalizable principles or practices. Anything less than universal, anything that does not apply equally to all, will eventually produce conflict and drive us to make the law more universal to avoid the conflict. We will be driven on toward the universal, the rational, the right.²⁹ Something much like the categorical imperative operates historically in spirit. Thus, what spirit

gives us as right *will* be universalizable. If not, it will sooner or later be overcome and be moved closer toward the universalizable.

Hegel tells us that reason in history is not so impotent as to yield only a moral ought.³⁰ In *Sittlichkeit* we get beyond a contingent situation in which individuals may or may not know, and may or may not do, the good. The good is not something that merely *ought* to be realized. It is not just an abstract idea claiming to be obligatory. The good *is*. It exists. It has been objectified, actualized, and embedded in our customs, traditions, habits, and practices. It has been shaped by our institutions, laws, philosophy, art, and religion. It forms and educates our attitudes, values, disposition, and behavior. As Hegel puts it, “ethical life (*das Sittliche*) appears as [the] general mode of conduct, i.e., as custom (*Sitte*), while the habitual practice of ethical living appears as a second nature. . . .”³¹

Sittlichkeit does not merely tell us that we ought to do good, say, to our spouse or our children. It gives us a concrete understanding of what doing such good means; and it embeds this in our customs, traditions, practices, and dispositions such that we know how to act, are able to act, and actually do act accordingly. It enables us not just to *intend* the good, to *try* to do the good, but to succeed in doing it, as well as to pass this knowledge and ability on to others. It gives us more than an ought—it gives us actuality.

Within such an ethical community, Hegel thinks, “it is easy to say what one must do, what are the duties one has to fulfill in order to be virtuous: all one has to do is what is prescribed, expressed, and known to be appropriate for one in this situation.”³² After all, do we really need to do a Kantian analysis to see that theft, murder, and child abuse are wrong? Must we really ask whether such maxims can be universalized without contradiction? Are we really neutral (or unsure) about such actions until we calculate and analyze in such ways? Were someone to answer yes to any of these questions, we might suspect them of being automatons impervious to spirit. Hegel writes,

the ethical [*das Sittliche*], as their general mode of behavior, appears as *custom* [*Sitte*]; and the *habit* of the ethical appears as a *second nature* which takes the place of the original and purely natural will and is the all-pervading soul, significance, and actuality of individual existence. . . . It is *spirit* living and present as a world. . . . Here . . . at the level of ethics,

the will is present as the will of spirit and has a substantial content. . . .³³

The laws of *Sittlichkeit* appear to us as given—as objective and absolute. A law must be rooted in a community, in its customs, traditions, and practices. It must be rooted in the character, dispositions, and habits of citizens. It must be a force that empowers its citizens. It is not enough that it merely oblige them. Citizens should not merely *believe* in their laws. Belief, Hegel thinks, suggests that what is believed in is alien to the believer. Hegel thinks we should be one with our laws.³⁴ Laws must not merely be objects of belief. They must be so rooted in our life practices that we simply *know* them. They are simply facts—they are absolutes. Is this really that odd? I have just suggested that we do not merely *believe* that murder is wrong. It is not necessary to engage in a subjective process of analysis, like asking whether it can be universalized without contradiction, *in order to* know that murder is wrong. To think we must is to miss something fundamental. It is to subjectivize something that is absolute. Of course, to decide whether a particular act is actually an act of murder, or whether it is first- or second-degree murder, might require a good deal of analysis and deduction. That murder itself is wrong, however, does not and should not.

We must move on, then, to spirit. Ethical content can only be found in culture, where it has an objective being of its own, where it is socially constructed as our customs, traditions, practices, and public institutions—a given ethical world. In *Moralität*, we had not yet reached spirit. In *Sittlichkeit* we have. In *Sittlichkeit*, “will is present as the will of spirit and has a substantial content which is in conformity with itself.”³⁵ Virtue, for Hegel, is the ethical order reflected in individual character.³⁶ When expressed in conformity to the duties of the sphere to which the individual belongs, we have the virtue of integrity [*Rechtschaffenheit*].³⁷ To be virtuous in an ethical community, all one need do is what is well-known and prescribed as appropriate in one’s established relations.³⁸ The ethical appears as the generally adopted mode of action—as custom, habit, second nature. It becomes “the very soul, meaning, and reality of one’s daily life. It is the living spirit actualized as a world; by this actualization does the substance of spirit exist as spirit.”³⁹

To give an example of duties easily known from one’s established relations, since in the next section we will begin discussing the family, we may take the case of children. Hegel writes:

Children have a right to be *brought up* and *supported* at the expense of the family. The right of the parents to their children's *services*, as services, is based on and limited to the common concern of caring for the family in general. . . . The services which may be required of children should therefore contribute solely to the end of their upbringing. . . . The position of Roman children as slaves is one of the institutions which most tarnishes the Roman legal code, and this offence against the most vulnerable and innermost life of ethics is one of the most important moments which enable us to understand the world-historical character of the Romans and their tendency toward legal formalism.⁴⁰

Spirit gives us the content that Kantian *Moralität* lacked. Neither ancient *Sittlichkeit*, which could not see that slavery was wrong, nor modern Kantian *Moralität*, which sees that it is but cannot prove much more than that it is,⁴¹ is adequate. Ancient *Sittlichkeit* alone is inadequate; so is modern *Moralität*. For Hegel, we need both together—we need a combination of *Sittlichkeit* and *Moralität*.⁴² We need the given ethical content of *Sittlichkeit*. We need customs, traditions, and practices embedded in our cultural world, constructed by our spirit, and given to us as objective; and we need the rational and universal principles of *Moralität*.

But how does spirit move from the ancient acceptance of slavery to the modern rejection of it? How does it move from a Roman legal code that sees children as slaves to the modern rejection of child exploitation? How does it discover what it means to treat humanity as an end, not merely as a means? Hegel's answer will be that laws, principles, or practices that are less than universal, less than equal for all, will over time give rise to conflict that will force them to become more universal. It will drive them toward the universal, the rational, the right. It will force them toward agreement with the categorical imperative. To further understand this, however, will take a lot more work and will have to wait until the end of Hegel's treatment of *Sittlichkeit*, where he takes up world history.

But if spirit is able to provide us with such content, with such content given to us as ethical, the categorical imperative will have no trouble guiding our action further. If private property is given as ethical, it would clearly be a contradiction to pocket that apple from the fruit stand. If respect for children (that is, not merely that children be

treated as ends rather than merely means, but all the concrete detail of such treatment) is given as ethical, then it would be a contradiction not just to exploit children but to contradict any of that detail. In moving from *Moralität* on to *Sittlichkeit*, we do not give up on *Moralität*; we do not leave it behind; we do not eliminate it. We realize it—we make it possible. We give it determinate content and thus allow it to work.

Buchwalter argues that Hegel tends to view virtue as civic virtue, which takes the form of public spiritedness, political sentiment, or patriotism, where the citizens freely will communal ends and take such ends as expressing their own subjective desires.⁴³ Patriotism habitually recognizes the community as one's substantial basis and aim. This habitual willing is the product of the institutions subsisting in the state. Since they are rational, action in conformity with these institutions gives rationality its practical activation.⁴⁴

For this to make sense, we must remember that the ethical community is spirit. We are formed by our culture, our community, our spirit. We are encultured, habituated, en-charactered. Virtue is the subjective dimension of the ethical substance—the ethical order reflected in the individual. But at the same time, we have constructed our culture. Our culture, our community, our spirit is our own doing. We embed our values, beliefs, ideas in our laws, institutions, and practices, in our philosophy, art, and religion. It forms us, but we form it. It is nothing but our doing as we are nothing but its doing. This is why we can be free in spirit. We are with ourselves, *Beisichselbstsein*, in the ethical community. It is not other. It is not alien. It is our own essence. Civic virtue, or patriotism, is not passively accepting an external state. We construct the state and, as the state forms us, we can recognize the reflection of our own doing in ourselves. This was certainly the case in the ancient *polis*. Hegel will try to make the case for modern society. MacIntyre argues that for liberalism it is no part of the legitimate function of government to inculcate virtue, as it was for ancient society.⁴⁵ Whether or not Hegel thinks it is the function of the state to inculcate virtue, he certainly thinks that this is the function of spirit.

If we understand spirit, we will not find it odd when Hegel tells us that in duty people are “liberated to their substantive freedom.”⁴⁶ To act upon duty is to act in accord with one's own essence, one's own laws, values, and beliefs, which have been embedded in one's institutions, customs, and practices, and which have shaped one's own character, dispositions, interests, and feeling.

Buchwalter thinks that any effort to revive the Greek doctrine of virtue is futile. Any effort to derive ethical norms from analysis of natural motivation is impossible. Moreover, Hegel himself denies that empirical accounts of behavior can yield prescriptive insight.⁴⁷ This may well be, but it is certainly the case that spirit would have no such problem giving us norms, duties, and ethical obligations—that is, that we give them to ourselves as part of our spirit. If our spirit constructs our world, if it forms our laws, practices, and values, then *ought* would already be embedded in is, values in facts, and norms in the empirical.

We have said that to be free, for Hegel, the individual must engage in rational action of the sort Kant described in discussing duty and the categorical imperative. That, however, is not sufficient to make us free for Hegel. The objective world must also be rational. Our institutions must be rational. This objectified rationality makes the world accessible to the rationality of the individual subject and it reinforces it, confirms it, and even recognizes it. Rational action on the part of individual subjects that is confirmed and reinforced by an objectively rational world will encourage the production of habit, character, disposition, and feeling that will reinforce both rational action on the part of the subject and the rational institutions of one's world. Such a situation, in short, produces virtue. Subjective character traits will coincide with objective norms and duties, and each will reinforce the other. Subjective inclination and institutionalized norms will tend to lose their oppositional character. One will become inclined to duty.

The Family and Love

In section 1 of “Part Three: *Sittlichkeit*,” in order to move us beyond Kantian *Moralität* and on to the first and simplest level of *Sittlichkeit*, Hegel takes up the family. He writes:

The family, as the *immediate substantiality* of spirit, has as its determination the spirit's *feeling* . . . of its own unity, which is *love*. . . . Love means in general the consciousness of my unity with another, so that I am not isolated on my own . . . , but gain my self-consciousness only through the renunciation of my independent existence . . . and through knowing myself as the unity of myself with another and of

the other with me. But love is a feeling . . . , that is, ethical life [*Sittlichkeit*] in its natural form. . . . The first moment in love is that I do not wish to be an independent person in my own right . . . and that, if I were, I would feel deficient and incomplete. The second moment is that I find myself in another person, that I gain recognition in this person . . . , who in turn gains recognition in me.⁴⁸

Familial love is a form of freedom as *Beisichselbstsein in einem Andern*, being with oneself in an other. The family is a realm of feeling and inclination, yet, *contra* Kant, it is a perfectly ethical realm in which one confronts nothing other, alien, or heteronomous. One is (literally) at home and thus free. The object of my love, Hegel says, is my other self.⁴⁹ This unity between myself and the other is an essential union—it is part of my essence. I am not an independent person, but a *member* of this unity—a family member.⁵⁰ Marriage transforms a natural sexual union into a spiritual union.⁵¹

Kant distinguished between practical love and pathological love. “Pathological love” is Kant’s wonderful term for love as a feeling or inclination, that is, love as ordinarily understood. “Practical love,” on the other hand, is beneficence from duty. Only the latter has moral worth for Kant. And he tells us that an action from duty requires us to put aside entirely the influence of inclination.⁵² Hegel rejects this completely. Love is perfectly ethical.

In order to understand Hegel’s concepts of love, marriage, and *Sittlichkeit*, which are closely related, we must say more than we yet have about his very important theory of recognition. Williams argues that for Hegel reciprocal recognition is not only constitutive of love and the family but of the state as an ethical community.⁵³ Indeed, it is constitutive not only of *Sittlichkeit* but of all right in general.⁵⁴

Simply stated, right is the relation of persons to each other, as they recognize (or fail to recognize) each other. The genesis of right therefore coincides with the recognition of the other as other. Right is present whenever the other is recognized as counting, as carrying weight against one’s freedom, and vice versa.⁵⁵

It is Williams’s view that, in the master-slave dialectic of the *Phenomenology*, Hegel developed his concept of recognition in the shape of

inequality and domination. Hegel's treatment of the family is of special interest because here he develops his concept of recognition in the shape of love—and for Williams love excludes domination and inequality. But then Williams finds it disappointing that Hegel presents a traditional view of gender roles that are anything but equal.⁵⁶ The point would seem to be that Hegel holds, correctly in Williams's view, that love implies reciprocal recognition between equals,⁵⁷ but that Hegel does not think men and women are equals. Thus, for Williams, there is a tension in Hegel's thought.

While I agree that mutual recognition plays a fundamental and central role in Hegel's concept of the family, the state, and of *Sittlichkeit* in general, and in no way want to deny this, nevertheless I do not think we have a tension in Hegel's thought here. I do not think so for two reasons: first, because I think it is a mistake to hold that love requires equality, and second, because for Hegel the form of recognition most important for *Sittlichkeit* cannot simply be between equals. All of this must be explained.

There are places where Hegel does in fact claim that love is between equals.⁵⁸ And he sticks to this in the *Philosophy of Right* insofar as he rejects the sort of inequality implied in marriages arranged arbitrarily by parents who do not consult the marriage partners. He thinks these occur among "peoples who hold the female sex in little respect. . . ."⁵⁹ And he also rejects polygamy, in which he thinks the wife does not "attain to her rights, and the marriage does not become a genuinely ethical relationship. . . ."⁶⁰ But while rejecting such forms of inequality, it is nevertheless clear in the *Philosophy of Right* that Hegel does not consider men and women to be equals in any deeper sense. For Hegel, one sex is powerful and active, the other passive and subjective. He says,

Man therefore has his actual substantial life in the state, in learning . . . , etc., and otherwise in work and struggle with the external world and with himself. . . . Woman, however, has her substantial vocation . . . in the family, and her ethical disposition consists in this [family] *piety*. . . . Women may well be educated, but they are not made for the higher sciences, for philosophy and certain artistic productions which require a universal element. Women may have insights . . . , taste, and delicacy, but they do not possess the ideal. The difference between man and woman is the difference between animal and plant; the animal is closer in character to man,

the plant to women, the latter is a more peaceful [process of] unfolding whose principle is the more indeterminate unity of feeling. . . . When women are in charge of government, the state is in danger, for their actions are based not on the demands of universality but on contingent inclination and opinion. The education of women takes place imperceptibly, as if through the atmosphere of representational thought, more through living than through the acquisition of knowledge . . . , whereas man attains his position only through the attainment of thought and numerous technical exertions.⁶¹

In nature, accidents can occur, there can be divergences from the essential determination. There have been women who devoted themselves to science, but they do not pursue it deeply, and they make no discoveries. In art they can produce things that are pleasant, but the ideal . . . is beyond them.⁶²

Clearly, then, Hegel does not take men and women to be equals. And his occasional claims that love requires equality, I suggest, should be understood as limited to ruling out inequality that goes as far as that found in arbitrarily arranged marriages and polygamy. At the same time, moreover, it is a misunderstanding, as I have argued elsewhere, to think that love in fact requires, necessitates, or is impossible without, equality.⁶³

Love *can* be accompanied by equality, as Hegel thinks is the case between brother and sister.⁶⁴ But love does not *require* equality. I certainly agree that it is desirable that a loving relationship between husband and wife *also* be a relationship of equality. But just as a relationship of equality need not involve love, so we can have love without having equality. To think that love and equality *necessarily* go together is to romanticize love—to expect something of it that it is not. It is quite normal for people to love someone they consider their inferior or their superior—God, the King, the Queen, our children, our parents. And for centuries, men have loved their wives while thinking them their inferiors. Moreover, there is no good reason to think that some of these men did not really love their wives—certainly *not* because love and inequality are in some way incompatible. Those relationships, I certainly agree, would have been improved by equality, but there is nothing about loving someone that one considers an inferior that necessarily distorts the love. Love and

equality are just different things. Love can be perfectly real love when it is love of an equal, a superior, or an inferior.⁶⁵

Furthermore, while it is quite possible to love someone who is your inferior, this is not at all incompatible with taking that person, in another sense, to be your superior. In love, I find myself in the person I love, and I am recognized by that person.⁶⁶ That the most wonderful and important person in the world loves me, makes me feel that I am worth such love. It reinforces and confirms me.

At any rate, it is Hegel's view, we have seen, that recognition from a nobody is worth nothing. That was the problem in the master-slave dialectic. The master depended for recognition on the slave. The only thing that made the master a master, the only source of recognition for the master, the only thing that could constitute his reality as a master, was the recognition that the master in battle coerced out of the slave.⁶⁷ What could such recognition be worth? Moreover, it was the master himself who made the slave a nobody. What kind of reality can be constituted for the master by recognition forced from a nobody?

It is clear that adequate recognition can be gotten neither from a radical inferior nor gotten through coercion. Such recognition cannot establish my reality. Thus, the recognition that one hopes for in a loving relationship like marriage cannot be coerced and it must, I think, rule out the sort of inequality found in arbitrarily arranged marriages, in polygamy, and, now we can add, in slavery.⁶⁸ But, for Hegel, no greater equality is to be expected. Furthermore, it is not required.

It is not required because the recognition that takes place between the loving couple, even if they were to be *perfectly* equal, is not enough in itself to constitute a marriage in the first place. For Hegel,

the solemn declaration of consent to the ethical bond of marriage and its recognition and confirmation by the family and community constitute the formal *conclusion* and *actuality* of marriage. . . . It is accordingly only after this ceremony has *first taken place* . . . that this bond has been ethically constituted. . . . Friedrich von Schlegel in his *Lucinde* and a follower of his . . . have argued that the marriage ceremony is superfluous and a formality which could be dispensed with, on the grounds that love is the substantial element and that its value may even be diminished by this celebration. These

writers represent the physical surrender as necessary in order to prove the freedom and intensity of love—an argument with which seducers are not unfamiliar.⁶⁹

The recognition involved in reciprocal love is not adequate to constitute a marriage. Recognition by family and community are required besides. Thus, even here at this first level of *Sittlichkeit*, where we have a simple model of mutual recognition between equals (even if they are not perfectly equal), we see that recognition between such equals, while necessary, and while very important at a personal level, and not at all something I want to de-emphasize, is nevertheless not sufficient to constitute even the relationship of marriage. Relying on recognition from an inferior, we have seen in “Lordship and Bondage,” is inadequate, but so is recognition between equals or near equals. If reciprocal recognition between equals were adequate, we could, with Schlegel, dispense with the marriage ceremony as superfluous. Even here at the level of love and marriage, I suggest, we can recognize Hegel’s general commitment to the notion that the more significant the recognizer, the more real the recognized. Moreover, if we look closely, we can find this notion in other places where Hegel discusses reciprocal recognition:

In an ethical totality such as a family or a state, all are recognized. Thus the struggle for recognition has disappeared. . . . In society all citizens are recognized and count as free. The freedom of every individual exists only insofar as he is recognized as free by the others, and the others have in him the consciousness of their own legitimacy, [that they count for him]. In a rightful situation, every person counts, because he allows everyone else to count as free. I am free insofar as the others are free, and I let them count as free just as they let me count as free. In love and friendship this [counting] is more at the emotional level, but in civil society I count as an abstract person without regard to my subjective peculiarities.⁷⁰

It is clear here that the freedom of any individual, as well as right in general, requires recognition by other individuals, and at the same time it is quite clear that this means recognition by others *in the plural*—recognition by civil society or the state. One might ask oneself

what sense it could make to claim to be free if no one else knows about it or recognizes it? Or if one other person does? Or a few? In Hegel's view, your freedom becomes real only in gaining recognition of sufficient scope—and he thinks the same thing is true about marriage.

Hegel's view can be summed up, I think, by saying that the more important the recognizer, the more valuable the recognition and the more real the recognized. The recognition gained in love is without any doubt valuable and important, and it is not something in any way to be de-emphasized. By itself, however, it does not even make me a husband. It certainly does not make me a citizen. It is not clear that it even makes me a person, if a person is that to which civil law applies and which it recognizes and protects. Besides, love can fade and end in separation or divorce. As valuable as the recognition of another person is, I need a recognizer that is more stable, lasting, and important than another person.

Moreover, Hegel thinks that individuals historically have known quite well that recognition by an equal is not sufficient. In the section of the *Phenomenology* entitled "Culture and its Realm of Actuality," where Hegel describes the rise of absolute monarchy in France, we see that individuals realize that the more important the recognizer, the more real and significant the recognized. Consequently they set about constructing institutions that they can collectively serve, so as to create a reality important enough that the recognition they can get back from it will make them significant.⁷¹ We might ask ourselves whether Noble Consciousness would rather serve the greatest monarch of all time or some petty regent ruling a peripheral backwater? Those who construct and serve the greatest of monarchs become more real and important in doing so. Institutions from which we are to gain recognition, Hegel thinks, must be raised above ourselves. What we need, he thinks, is the highest and most significant recognition, recognition we cannot get even from an absolute monarch, which after all (in the next section of the *Phenomenology*) will be overthrown in the French Revolution. What we need, Hegel will argue in later parts of the *Philosophy of Right*, is recognition from a modern rational state, and, as we will see shortly, ultimately from spirit (*Geist*).

And so, in the *Philosophy of Right*, as we begin to examine *Sittlichkeit* and the recognition involved in it, as we start with the simplest sort of ethical relation, a loving relationship between two married individuals, we begin to see even in this relationship, if we examine it carefully,

that it involves much more than a relation between two individuals. It requires recognition from family and community. Thus, even this simple relationship will force us to move on and take up more complex forms of recognition, not just to understand *Sittlichkeit*, but even to understand this simple relationship of love and marriage itself.

Marriage

Hegel rejects the notion that marriage is to be understood merely as a natural, physical, sexual relationship, as he thinks it was for the natural law tradition. So also, he finds it equally objectionable to reduce marriage, as does Kant, merely to a civil contract entitling the parties to the sexual use of each other.⁷² Furthermore, he thinks such marriages should not be arbitrarily arranged by parents. At the other end of the spectrum, however, marriage should not simply be equated with love, a feeling open to contingency, transience, and capriciousness.⁷³

All of these conceptions of marriage fall below the ethical, and marriage, for Hegel, is an ethical relationship. Marriage should subordinate the natural drive and the contingency and transience of the passions to the spiritual bond that must assert itself as the substantial factor. This substantial bond constitutes the two individuals as a single person between whom a contract would be out of place.⁷⁴ The substantial ethical bond of marriage originates not in an arbitrary arrangement by parents but in the free consent of the individuals. This substantial ethical bond, however, is concluded and actualized through recognition by the family and the community. "*Marriage* is the formal union of two persons of differing sex, brought to public recognition and so acquiring the status of a legal relationship. . . ."⁷⁵ Schlegel's view that such a ceremony is superfluous because love is all that matters is a view that Hegel rejects. Such a relationship would lack adequate recognition and thus ethical substantiality.⁷⁶

For Hegel, the producing of children is not the sole or essential goal of marriage.⁷⁷ It is possible to marry even if it is not possible to have children. Marriage "unites the different aspects of a particular determinate existence, and no single aspect is an absolute end on its own account."⁷⁸ It is also the case, for Hegel, that marriage should not be concluded within the natural circle of people familiar to each other, certainly not by blood relatives. It should take place between people from different

families and who are different in origin. The power of spirit “increases with the magnitude of oppositions out of which it reconstitutes itself.”⁷⁹

In his discussion of marriage, we are able to understand in greater depth Hegel’s concept of recognition, as well as its importance and significance. Recognition makes things real. Just as property is only property because it is formally recognized by a proper authority, just as a state is legitimate, that is, a *real* state, only if it is recognized by its citizens and by other states, just as citizens are only really citizens if they are recognized by other citizens and by a legitimate state, so a couple is only really married if their union is recognized by their family and their community, that is, only if it is brought to public recognition and so acquires the status of a legal relationship.⁸⁰ Without that recognition, the couple can have a very important and significant personal relationship, but it would not amount to a public, legal, *real* marriage.

At this point, I would like to compare Hegel’s traditional conception of marriage with some contemporary arguments concerning same-sex marriage. I want to do so not just because I think Hegel can illuminate some of the contemporary concerns surrounding same-sex marriage but because I think doing so will allow us to more deeply understand Hegel’s theory of recognition.

This might strike the reader as rather bizarre. Hegel would not have believed in same-sex marriage—he thinks marriage must be between “persons of differing sex.”⁸¹ In fact, Pillow argues from Hegel’s texts, and does so rather convincingly, that Hegel would be hostile to homosexuality and would reject same-sex marriage.⁸² Despite that, Vernon and others have been able to argue, and rather persuasively, that Hegel’s concept of freedom could be used to justify same-sex marriage as an extension and actualization of this freedom.⁸³ None of these authors, however, makes use of Hegel’s concept of recognition. In fact, Monahan argues that a great many of those who write on liberation from oppression (he mainly discusses feminists) reject Hegel’s concept of recognition because they mistakenly think it is tied primarily or exclusively to the master-slave dialectic and thus to conflict, domination, and inequality. They fail to notice that recognition is much broader than that.⁸⁴ I would like to argue that Hegel’s concept of recognition (together with his concept of spirit) will not only provide another argument for same-sex marriage but one that can capture especially well some of the central issues that actually concern contemporary proponents of same-sex marriage and help provide them a philosophical underpinning.⁸⁵

I do not wish to suggest that Hegel has the one, complete, and true theory of marriage. I do not wish to suggest that it can address and handle all issues here. My claim is much more modest. I think Hegel's theory of marriage can be used to explain and justify *some* of what proponents of same-sex marriage are after and it can be used against some alternative positions.

Some gays and lesbians, of course, are *not* proponents of same-sex marriage. Some of them, for example, object to marriage as state regulation of personal relationships, and some of them see marriage in general as a problematic institution.⁸⁶ In this they resemble Schlegel, who thought the value of a loving relationship might even be diminished by marriage.⁸⁷ Pillow, in arguing that Hegel would be hostile to homosexuality, argues against Hegel's concept of marriage in very Schlegelian fashion. It must be said, however, that Vernon, who also gives a rather Schlegelian interpretation of Hegel's concept of marriage as based on the free choice of the individuals, is nevertheless able to argue for a right to same-sex marriage as an extension and actualization of this freedom.⁸⁸

At any rate, besides those who oppose same-sex marriage, there are also, and increasingly, gays and lesbians who would like to marry. And they often confront a similar sort of Schlegelian objection: Why is *marriage* necessary? Why not just a loving relationship? Perhaps we could even allow legally recognized domestic partnerships or civil unions—why isn't that enough? Even among those who believe in gay rights, some may still find it difficult to go as far as accepting actual *marriage* for same-sex couples and wonder why it is necessary. The answer, I think, is perfectly clear to anyone who understands Hegel.

Hegel rejects arbitrarily arranged marriages at one end of the spectrum and finds insufficient mere love without marriage *a la* Schlegel at the other end of the spectrum. Hegel wants a substantial ethical relationship between marriage partners made real by recognition, not merely reciprocal recognition between the partners, not merely recognition by family and friends, but recognition by the community, such that the relationship is brought to public recognition and acquires the status of a legal relationship.⁸⁹ Though no contemporary arguments for same-sex marriage that I know of employ Hegel's concept of recognition, nevertheless, this concept, it seems to me, captures especially well what these proponents are after. As one author puts it, same-sex couples want the existing institution of marriage, "not some back-of-the-bus version called 'domestic partnership. . . .'"⁹⁰ In other words, such couples see,

just as Hegel does, that a loving relationship between two people, while highly valuable, is not enough. They see that to be denied a marriage and allowed only a domestic partnership is to be relegated to second-class status. Such couples take their relationships to be just as real as relationships between heterosexuals. Thus, they want their marriage to be real not just for themselves and for their spouses, and not just for their families and friends, they want it to be real *in-itself*. They want it to be *objectively* real. To be denied the opportunity to marry, to be allowed only a right to a domestic partnership, is to be denied an ontological status.

To the question, why not just get all the rights and benefits of marriage without the name, the answer is that that means without the *reality*. It means that the relationship between the same-sex couple is not as real as the relationship between different-sex couples. It is not as significant. It is not worth as much. This demeans and devalues the same-sex relationship—and it does so ontologically.

One should not have to think that one's relationship is less than real—that one's marriage is not a real marriage. Marriages between two people are at the center of their lives and identities. These identities need to be recognized as real, important, and valuable. They should not be relegated to second-class status. Those involved in them should not be seen as people who have devoted their lives to something strange, quirky, or queer—something that does not have ontological significance. That demeans them. Their marriage, like any marriage, should be an ethical-spiritual bond actualized and made real by recognition.

Understanding Hegel should also allow us to see that those who desire same-sex marriage would not likely be satisfied with the suggestion of some that in order to avoid civil unions or domestic partnerships as second-class alternatives to same-sex marriage we should just get rid of civil marriage *altogether* (that is, get rid of both same-sex and different-sex marriage).⁹¹ To replace all marriage with civil unions would simply be to deprive *all* of the ontological status of marriage in order to make them equal. This is to say that we would fail (or refuse) to recognize the reality of all these relationships.

We must also notice that for Hegel marriage is a *spiritual* union,⁹² that the recognition involved is not just reciprocal recognition between two individuals, and not even just recognition by family and community that has acquired a legal status; it is recognition by spirit. Lacking this, same-sex marriages would not be real. The couple may recognize their marriage as real, their family and friends may, their community (if they

live in the right community) may, and now the Supreme Court does,⁹³ but if other states and the people that live there resist, or backslide, the reality of this marriage will not have been fully actualized. This is to say that mutual recognition between the two individuals, while not enough on its own, but which is nevertheless of utmost importance, can only be grounded, realized, and made real within and through this higher spiritual recognition.

At a certain point in the history of spirit's development (and it certainly seems that in the United States we are very close to that point, if not already there), spirit may fully recognize same-sex marriage. At that point, it will not matter what Catholic Bishops, right-wing Fundamentalists, or people in neighboring states say. The couple will be married. Their marriage will be as real as any marriage. This does not mean that same-sex marriage will be accepted as real by every single person, any more than that everyone accepted the emancipation of slaves at first. It *will* mean, however, that such people are now put in the position of failing to recognize a human right. Despite such people, slaves *are* free and same-sex couples *are* married. And, at a certain point, such people no longer matter. They are swept aside by spirit. Prejudice against Irish Americans and Italian Americans in the United States has diminished to the point where if one encounters people who express such prejudice they are just taken to be fools. The point is that spirit can move beyond you and make your views wrong. No matter how deeply and sincerely you believe that slavery is right or same-sex marriage wrong, you are swept aside and begin to look like a fool.⁹⁴

However, Hegel has said that the power of spirit "increases with the magnitude of oppositions out of which it reconstitutes itself."⁹⁵ Hegel does not think that people who are close to each other in origin should marry.⁹⁶ One might think this same principle should be extended, and that only individuals of different sex, not the same sex, should marry.⁹⁷ And Hegel might well agree with such an extension. He certainly believes that only differing sexes should marry.⁹⁸ Nevertheless, while it is true that same-sex marriages are between individuals who are close to each other in the sense that they are of the same sex, they are not at all close to each other in another very important sense. Certainly in the past, same-sex marriage has appeared to many as a joining of what is utterly alien, a joining of what cannot or should not be joined. For spirit, then, to succeed in joining what "cannot" be joined would be a

triumph of spirit: a bringing together in the most intimate type of unity of what previously seemed utterly alien.

One very standard argument against same-sex marriage is the slippery-slope argument: if you allow gays to marry, you start down a slippery slope toward polygamy, bestiality, and incest. Hegel's concept of spirit can help us see the weakness of such arguments. For example, in many places in the world, polygamy is legal and accepted. But I can detect no hint that in the spirit of the United States or Europe there is any movement toward recognition of polygamy. Indeed, I suspect that in some polygamous countries there is possibly a slight movement away from polygamy. At any rate, if the actual *existence* of polygamy in the world is not pushing us down a slippery slope toward the recognition of polygamy, how could same-sex marriage push us toward it?

As for bestiality, I see nothing to suggest the possibility of its recognition as a legitimate form of marriage within our spirit, and the suggestion that same-sex marriage would lead to bestiality, it seems to me, is an attempt to denigrate homosexual acts by likening them to bestiality. On the other hand, if I may be allowed a science fiction moment: if an intelligent alien species were to be discovered that looked, say, like cats,⁹⁹ and it was a species that could choose to marry, then to object to marriage between members of our species and this new species would be more like objecting to mixed-race marriages, and thus like racism, than like objecting to bestiality. Our spirit has gotten beyond objections to mixed-race marriages and, I suspect, would be able to get beyond objections to inter-species marriages. Bestiality cannot amount to marriage if one party is forced, or does not choose, or is not able to choose to enter into a relationship of reciprocal recognition. If the two parties are fully able to choose to enter into a relationship of reciprocal recognition, then their species, like their race, should not matter. And I suspect that our spirit would eventually recognize this.

Again, I see no tendency in our spirit toward the recognition of incestuous marriages and I do not see how the recognition of same-sex marriages could lead in that direction. Basically, Hegel's concept of spirit weakens the slippery-slope argument. The slippery-slope argument operates at the level of sheer abstraction. It proceeds by arguing that if we allow one new thing that is strange, different, or bizarre, then why not all other strange, different, and bizarre possibilities? Hegel is always opposed to such abstraction and his concept of spirit gives us a concreteness that

allows us to meaningfully explore whether one change in spirit might concretely lead to another, rather than assuming it could simply because both are new, strange, or bizarre. We can tell concretely whether our spirit is likely to recognize polygamy, bestiality, or incest. The attempt to deny individuals a right to same-sex marriage because some future, bizarre abstraction may occur is to try to overrule a real, concrete, and increasingly recognized interest by using a very weak argument—and we should see that it is a very weak argument.

Furthermore, Hegel's concept of spirit should make it easier for us to see what some proponents of same-sex marriage argue would be the result of legalizing it, namely, that marriage in general would be strengthened and reinforced. Marriage would be made even broader in scope—more universal.¹⁰⁰

Opponents, on the other hand, often argue that same-sex marriage would be a threat to marriage. The only way, it seems to me, that this makes any real sense is that same-sex marriage would take away the priority of different-sex marriage much as the discovery that the earth orbits the sun made the earth no better than any other planetary body. While this disturbed contemporaries of Copernicus, it does not disturb anyone today.

However, I suspect that when conservatives say that same-sex marriage trivializes or demeans marriage,¹⁰¹ what they mean is that since they do not view same-sex marriage as marriage, if whatever goes on there is given the name "marriage," it weakens "real" marriage by blurring the distinction between "real" marriage and whatever it is that goes on among same-sex couples. But if we have a Hegelian concept of spirit, and we see that its recognition of same-sex marriage makes same-sex marriage real marriage, makes it ontologically real, then we see that the reality of marriage has been extended, just as in a previous era it was extended to mixed-race couples and before that to couples from different religions. This is hardly to erode marriage. It extends marriage, deepens it, and makes it more universal. It gives us another example of the power of spirit to bind together what had previously been found alien. This is a strengthening of spirit, not its erosion. As we have seen earlier, anything short of the universal, anything that does not apply equally to all, anything that denies a right to some, here the right to marry, will sooner or later produce conflict and will sooner or later drive us to extend the law—universalize it—to avoid the conflict. Spirit will be driven on toward the universal, the rational, the right. Hegel's theory

of spirit and recognition philosophically illuminates same-sex marriage better than any theory I know.

A somewhat better argument by opponents is that approval of same-sex marriage says to devout Christians, Jews, and Muslims that what their faiths teach is false.¹⁰² This is true, but so did the discovery by Copernicus that the earth is not the center of the cosmos, or by Darwin that humans are a product of evolution, tell these faiths that some of their beliefs were false. Nevertheless, it is important to see here that we do not have a case in which it is some alien entity (another church, a political party, a government) that is condemning these faiths from outside or forcing them to change. Hegel shows us that it is spirit, their spirit as well as ours, that produces change, and not as an alien force from outside, but from within us all. At an early point in this process, it will appear to be an alien force, but sooner or later we will see that it is our own spirit. That is certainly what has happened to us with slavery. I suspect it is happening to us with same-sex marriage.

A similar objection by opponents is that the legalizing of same-sex marriage implies approval of same-sex marriage, and they do not approve. Recognition, however, needs to be distinguished from approval. Recognition makes the relation objective and real. It says that the ex-slave is equal to anyone else. It says that a marriage between people of different races or the same sex is as real as any other marriage. It does not matter what I feel about ex-slaves, inter-racial marriage, or same-sex marriage. What I feel is reduced to a subjective reaction irrelevant to the objective reality. Recognition is ontologically much more important than approval, though, of course, being around people who do not approve of your relationship can be uncomfortable and cause you self-doubt. If we compare this to property, which is made real by recognition from a proper authority, we see that your property really is your property. It does not matter, for example, that I am a socialist and might not approve of your ownership of the property you own. That may possibly make you uncomfortable when you are around me, possibly even make you feel guilty, but it in no way changes the fact that the property is your property—*really* your property. And so, while approval would be nice, what proponents of same-sex marriage need is recognition—the ontological reality of their marriage.

Even if all objections to same-sex marriage could be answered, still opponents of same-sex marriage are likely to say that marriage just is something between a man and a woman and always has been throughout

history. However, this is simply not true. There are many places in the world today where one can marry a member of one's own sex. And of course in many societies and for a very long time, marriage has been a relationship between a man and *women*, not just *a* woman. Moreover, Eskridge, in an impressive book, has shown that same-sex unions have been legally sanctioned at quite a few times and places in human history.¹⁰³ The stage seems to be set for spirit's full recognition of same-sex marriage. And it seems to be occurring.

Sittlichkeit: Civil Society

Civil Society as *Sittlichkeit*

In discussing the transition from the family to civil society, Hegel says that, though it is a misapprehension, *Sittlichkeit* “appears to be lost” in civil society.¹ He even says that, “civil society tears the individual . . . away from family ties” and “alienates the members of the family from one another. . . .”² It is a *misapprehension* that *Sittlichkeit* has been lost, Hegel says, because, while it is true that in civil society my concern is for my particular interest, nevertheless I serve the universal which remains “the primary and essential factor” and the “ultimate power over me.”³ Hegel seems to be saying that the *appearance*, as Aristotle might have suggested, is that civil society, the market, and self-interest erode the ethical community,⁴ even, as Marx would say, that they produce alienation; but, the *reality*, more in line with Smith, Steuart, or Durkheim, is that civil society leads back to the universal and thus reinforces *Sittlichkeit*.⁵ I will argue that, in “Section 2: Civil Society” of “Part Three: *Sittlichkeit*,” this in fact is Hegel’s view.

Quite clearly for Hegel, civil society is part of *Sittlichkeit*—an expression of it. Moreover, it is not less so than the family. Indeed, it is a higher-level expression of *Sittlichkeit*. This might seem strange to those who know Marx and think of civil society as a realm of alienation and estrangement. For Marx, workers are estranged from the product, the process of production, and other members of the species. The more they produce, the poorer they become. This leads to a polarization of classes and the pauperization of the working class.⁶ *Sittlichkeit* would be impossible in civil society.

It is not that Hegel completely rejects all of this. He very clearly sees it as a tendency, even a *necessary* tendency, of civil society. It is a

tendency that cannot be eliminated, but which must be contained—and Hegel thinks it *can* be contained. If so, then civil society, given the interdependence produced through market exchange, could bind people together. Civil society can give particular interest free reign, allow it to flourish and gain satisfaction, yet bring it back to the universal and thus reinforce community. Using the language of Durkheim, civil society could produce organic solidarity.⁷ In this respect, Hegel anticipates Durkheim rather than Marx. He shows us how civil society can reinforce and deepen, rather than erode, *Sittlichkeit*.

For what we might call a Marxist reading, Hegel anticipates the problem of modern capitalist society. He sees that it has a necessary tendency to a polarization of classes and the pauperization of the proletariat. That is a real insight on Hegel's part. But this insight goes no further. Hegel sees the problem, but has no solution to it whatsoever. Furthermore, Marxists tend to think there can be no solution here. One must just abandon civil society and eliminate the market.

While I consider myself a Marxian, it is not at all clear to me that this Marxist reading is correct.⁸ I think it possible to read Hegel as proposing a solution to polarization and pauperization. Furthermore, it could be the case that the Marxist reading is also wrong about the facts—it could be that civil society *can* be prevented from producing polarization and pauperization as social democrats and market socialists, for example, think. And if so, then civil society might actually be able to reinforce and deepen *Sittlichkeit* as Hegel thinks it can. These are the issues that we must take up and resolve in this chapter.

As we have seen, it is Hegel's view that ancient *Sittlichkeit* broke down in the face of rising individuality.⁹ Individuality and *Moralität* are important for Hegel, and must have a place, but he thinks they go too far in the modern world, in the French Revolution, Kantian ethics, and *laissez-faire* economics. Hegel wants a higher *Sittlichkeit* that combines the undeveloped *Sittlichkeit* of the ancient world with modern *Moralität*. He wants a rational reflective morality that gives individuality and the satisfaction of self-interest a central place, but as concretely embedded in the customs, traditions, laws, character, and practices of a people. This synthesis, I suggest, is being worked out especially in the section on civil society.

It is Hegel's view that reason abstracted from the world, reason that wants to put itself completely in charge, that wants to remake the world from outside and above, such reason can even become terroristic—as

Hegel thinks it did in the French Revolution.¹⁰ Reason must instead be embedded in the world, in our customs, traditions, and everyday practices. Reason must be realized in the world such that our habits, feelings, and interests are formed in accord with reason. This is Hegel's concern in the section on civil society. Concrete freedom, he tells us, requires that particular interests be allowed to achieve their full development and gain recognition of their right. Yet in doing so, they must accord with the universal—such that they can recognize it as their own spirit. It should be the case neither that the universal is accomplished without particular interests, nor that individuals live as private persons concerned only with their particular affairs.¹¹ Hegel has in mind Adam Smith's notion that in actively pursuing our own personal profit we contribute without intending it toward producing the wealth of the nation, that common good from which each can gain a share. Hegel says that in civil society we each seek our own ends, but without others we could not attain those ends. In attaining our own ends, we promote the ends of others—particular interest produces the universal.¹²

While this principle of particularity, Hegel thinks, “appeared in the states of antiquity as an invasion of ethical corruption and as the ultimate cause of the downfall of those states,”¹³ this principle has been transformed in modern civil society:

The principle of modern states has the prodigious strength and depth of allowing the principle of subjectivity to progress to its culmination in the extreme of self-sufficient personal particularity, and yet at the same time bringing it back into the substantial unity, thereby maintaining this unity in the principle of subjectivity itself.¹⁴

As Hegel puts it, civil society gives to particularity the right to develop and to launch forth in all directions. And it gives to universality the right to prove itself to be not only the ground and necessary form of particularity, but also the power standing over it and its ultimate end.¹⁵ In civil society the welfare of each individual is conditioned by and interwoven with the welfare of all other individuals. In another text, Hegel even refers to this as a “communal system.”¹⁶

The characteristic of *Sittlichkeit*, we have seen earlier, is that it is a subjective disposition imbued with what is right in itself. It is the concrete identity of subjective will and the universal objective good.¹⁷ In contrast

to antiquity, then, where particular interest appeared as a corruption of the universal and thus the downfall of *Sittlichkeit*, in modern civil society, subjective particular interest itself leads to the universal and only thus is the universal accomplished. Civil society is a form of *Sittlichkeit*—indeed a higher level and more powerful form of *Sittlichkeit*. Hegel says,

private persons, despite their selfishness, find it necessary to have recourse to others. This is accordingly the root which links selfishness with the universal, i.e. with the state, which must take care to ensure that this connection is a firm and solid one.¹⁸

For Hegel, a people's spirit actualizes itself in their laws, institutions, and practices, so that the world increasingly becomes their own—a world that is not alien or other. In confronting their world, they meet and discover themselves. For Hegel, they confront their own rationality objectified. In obeying the laws of their society, they obey the laws of their own reason. Subjective reason recognizes objective reason and is at one with itself. We must find reason not just in the moral subject, as for *Moralität*, nor just as an abstraction, as in Abstract Right, but concretely in the actual world—all of it—if we are to have *Sittlichkeit*. And so we must find it in civil society, where it does not seem to be. *Sittlichkeit* in the ancient world found individuality and self-interest to be destructive. In the modern world, civil society allows individuality and self-interest to flourish and *Sittlichkeit* might seem to have disappeared. If we are to realize a higher *Sittlichkeit* in the modern world, and if it is to be *higher*, it cannot, as in the ancient world, simply exclude individuality and self-interest. And thus, if it is not to simply eliminate civil society, if it is to include it, then it must find rationality in civil society, that is, it must find that self-interest leads to the universal. Individuals in civil society pursue their particular interests but they do this in relation to the needs and interests of others, such that particular interest produces the universal. In this, as Hegel puts it, we see the “shimmering of rationality.”¹⁹ Hegel says that the science of Political Economy, as we find it in Smith, Say, and Ricardo, shows us “how *thought* extracts from the endless multitude of details with which it is initially confronted the simple principles of the thing . . . , the understanding which works within it and controls it. . . .” It allows us to, “recognize, in the sphere of needs,

this manifestation . . . of rationality which is present,"²⁰ and to see how it produces the universal.

As we saw above, to be free, for Hegel, we must confront an objective world that is not other, not hostile, not an obstacle to subjective reason. The objective world must be rational, such that subjectively rational action meets itself, meets reason in the world, and thus fits and is reinforced. If the world is ordered and arranged rationally, then subjective reason can find its world to be a rational arena laid out for its activity. It will be a world that will confirm and reinforce the subject.²¹

The *Philosophy of Right*, I have argued, takes up freedom as *Beisichselbstsein in einem Andern*, being with oneself in an other, at increasingly complex levels.²² In Abstract Right, consciousness was able to abstract from everything external, withdraw, and turn into itself.²³ It thus faced nothing other. It was alone with itself. And the external world that confronted it was posited as its own—as property. In *Moralität*, we continued this abstraction from the external, and moved further within—to reason.²⁴ Freedom required that we be self-directed by our own reason, and not toward an end external to reason, but toward the rational itself. "In doing my duty, I am with myself [*bei mir selbst*] and free."²⁵

In *Sittlichkeit*, to be with ourselves, we no longer have to abstract from the world and turn within. We can be with ourselves in the world. A people's spirit actualizes itself in their laws, institutions, practices, philosophy, religion, and art, so that the world increasingly becomes its own. Such a world is not alien or other. We transform what otherwise would be heteronomous into our own self-expression and self-determination. Reason can see itself in this world. Reason would not find the world an obstacle to reason, but a realm where it can be at home and free.

Wood argues that:

Hegel thinks that most people identify [freedom] with 'arbitrariness' . . . , with doing whatever we please . . . or venting our particularity and idiosyncrasy. . . . Hegel regards this view as shallow and immature; he insists that we are free only when we overcome 'particularity' and act 'universally' or 'objectively'. . . .²⁶

While it is quite true that pursuing self-interest, alone and of itself, is a shallow form of freedom, it is definitely not the case, for Hegel, that

self-interest has no place and is not an important aspect of freedom. It flourishes in civil society. It is allowed “to progress to its culmination in the extreme of self-sufficient personal particularity, and yet at the same time” is brought back to the universal,²⁷ such that we can recognize the shimmering “of rationality which is present in the thing . . . and active within it. . . .”²⁸ We must make room for all aspects of freedom. We cannot leave out self-interest and particularity. We certainly cannot allow them to threaten universality and *Sittlichkeit*, as in the ancient world. They must fit with, take place within, and reinforce the universal and *Sittlichkeit*.

Williams argues that for Hegel, “freedom remains a subjective certainty and not yet a right in the full sense, until it is recognized and acknowledged by others.”²⁹ At the same time, as seen in chapter 4, the master-slave dialectic showed us that we cannot get adequate recognition from a radical inferior, nor through coercion. Neither, we have also seen, is reciprocal recognition between equals sufficient. It is not even sufficient to constitute a marriage.³⁰ We need recognition of greater power and scope.

We get a greater and more significant form of recognition in civil society, not just because we get it from a much larger number of others, others as a mere aggregate, but because we get it from a systematic connection of others into which I am integrated. This is a systematic connection within which pursuing my self-interest contributes to the universal, such that I can come to recognize my contribution to others, and theirs to me. The recognition one gets from the family, while deep and very important, lacks the greater significance, the universality and scope, that one gets from civil society.

The Failure of Civil Society?

Forbes argues that, “Marxist and marxist-influenced studies of Hegel’s idea of the state have seen it as helpless in the face of the problem of poverty and the alienated proletariat, and as an essentially self-contradictory reflection of a bourgeois state on its way out.”³¹ We find this Marxist interpretation set out at greater length by Avineri:

Hegel realized that the mechanism of the market creates social polarization, poverty and alienation; in the *Philosophy of Right* the same radical critique of civil society emerges from Hegel’s discussion of the consequences of allowing it

free reign. . . . Hegel suggests state intervention in order to mitigate some of the harsher aspects of poverty; yet ultimately he is unable to provide a radical solution. . . . Hegel accepts Smith's view that behind the senseless and conflicting clash of egoistic interests in civil society a higher purpose can be discerned; but he does not agree with the hidden assumption which implies that everyone in society is thus being well taken care of. Poverty, which for Smith is always marginal to his model, assumes another dimension in Hegel. For the latter, pauperization and the subsequent alienation from society are not incidental to the system but endemic to it. Moreover, Hegel goes to some length to show that every suggested remedial policy put forward to overcome poverty in modern society seems to be useless, and some of these policies may even boomerang.³²

I agree with Avineri's characterization—except that I do not think it is clear that Hegel fails, or that Hegel thinks he has failed, in solving this basic problem of civil society. One thing we should notice here, as Wood and Hardimon point out, is that Eduard Gans, a student of Hegel's, "thought that because the existence of an impoverished class 'is only a fact, not something right, it must be possible to get to the basis of this fact and abolish it.'"³³ Despite the optimism of Gans, the prevalent view is the Marxist one, that Hegel does not and cannot solve the basic problem of civil society.³⁴ Hegel sees that civil society has a necessary tendency toward a polarization of classes and the pauperization of the proletariat. That is a significant insight on his part. But he has no solution to this problem whatsoever. Indeed, for Marxists there can be no solution. One must just abandon civil society and eliminate the market. I am not convinced that this Marxist reading is correct. I think Hegel can be read as proposing a solution, moreover, a solution that could actually work.

Hegel tells us that, "civil society affords a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both."³⁵ In §§243–45 of the *Philosophy of Right*, he tells us:

When the activity of civil society is unrestricted . . . the *accumulation of wealth* increases. . . . But on the other hand, the *specialization* . . . and *limitation* of particular work also

increase, as do likewise the *dependence* and *want* of the class which is tied to such work. . . . When a large mass of people sinks below the level of a certain standard of living . . . that feeling of right, integrity . . . , and honor which comes from supporting oneself by one's own activity and work is lost. This leads to the creation of a rabble. . . . No one can assert a right against nature, but within the conditions of society hardship at once assumes the form of a wrong inflicted on this or that class. The important question of how poverty can be remedied is one which agitates and torments modern society especially. . . . If the direct burden [of support] were to fall on the wealthier class, or if direct means were available in other public institutions (such as wealthy hospitals, foundations, or monasteries) to maintain the increasingly impoverished mass at its normal standard of living, the livelihood of the needy would be ensured without the mediation of work; this would be contrary to the principle of civil society and the feeling of self-sufficiency and honour among its individual members. Alternatively, their livelihood might be mediated by work . . . which would increase the volume of production; but it is precisely in overproduction and the lack of a proportionate number of consumers who are themselves productive that the evil . . . consists . . . , and this is merely exacerbated by the two expedients in question. This shows that, despite an *excess of wealth*, civil society is *not wealthy enough*—i.e. its own distinct resources are not sufficient—to prevent an excess of poverty and the formation of a rabble.³⁶

We should notice, in the first place, that Hegel is saying that this polarization and pauperization occur when the activity of civil society is *unrestricted*. That certainly leaves open the possibility that restriction could avoid the problem. Moreover, Hegel certainly seems to be saying that charity in fact *could* solve the problem; it is just that it would be at odds with the principle of civil society, that of individual self-sufficiency and the honor and dignity that depend upon it. Even so, the implication of this passage seems to be that it is only, or primarily, *private* charity that is at odds with the principle of civil society. Poor relief that involves universal regulations and ordinances, Hegel says in a previous passage, is “to be regarded as all the more perfect the less (in comparison with

what is arranged publicly) is left for an individual to do by himself as his private inclination directs.”³⁷

In another text, Hegel makes this point even more sharply:

On the general plane it is for the state to prevent universal need by taking appropriate measures . . . even in the case of individual need it is better for provision to be made by the state. . . . in this way individuals *can* act in benevolent fashion using the machinery provided by the state. Subjective assistance must be reduced to the minimum because it can harm instead of helping.³⁸

Here, assistance by the state is clearly distinguished from private charity, and it is taken to avoid the problems of the latter. It is certainly the case, we will see when we get there, that corporations avoid such problems:

Within the corporation, the help which poverty receives loses its contingent and unjustly . . . humiliating character, and wealth, in fulfilling the duty it owes to its association, loses the ability to provoke arrogance in its possessor and envy in others. . . .³⁹

Hegel is not holding what might be called the conservative position on charity, that it is humiliating and thus should not be given. For Hegel it must be given, but in a way that avoids humiliation. Thus, when Hegel says in §§243–45 quoted above that the “important question of how poverty can be remedied is one which agitates and torments modern society especially,” he may not be suggesting, as the Marxists would have it, that the problem of poverty simply cannot be solved. Rather, he may be suggesting that while it could be solved there is disagreement about *how* to do so—especially concerning the issue of charity.

So also, in the same quotation from §§243–45, when Hegel says, “despite an *excess of wealth*, civil society is *not wealthy enough*—i.e. its own distinct resources are not sufficient—to prevent an excess of poverty and the formation of a rabble,” he again may not be saying that the problem of polarization and pauperization cannot be solved at all. He may be saying that the problem cannot be solved in an unrestricted civil society using only the resources available to an unrestricted civil society.

Which means that if we call in the resources (that is, the restrictions) of the state—acting through the police and through corporations—we would have a different matter altogether.

With that possibility in mind, we should notice that at the beginning of the section entitled “C. The Police and the Corporation,” Hegel tells us that in civil society,

the right *which is actually present in particularity* means not only that *contingencies* which interfere with this or that end should be *cancelled* [*aufgehoben*] and that the *undisturbed security of persons and property* should be guaranteed, but also that the livelihood and welfare of individuals should be *secured*—i.e. that *particular welfare* should be *treated as a right* and duly *actualized*.⁴⁰

After telling us here at the very beginning of section “C” that particular welfare should be guaranteed as a right, eight pages later, in the middle of a subsection to section “C,” Hegel gives us the famous passage from §§243–45 that was quoted above to the effect that “despite an *excess of wealth*, civil society is *not wealthy enough*,”⁴¹ that is, the passage the Marxists take to be indicating the failure of civil society. But then, four pages after that, at the end of the very *same* subsection, Hegel writes,

What the police provides for in the first instance is the actualization and preservation of the universal which is contained within the particularity of civil society, [and it does so] as *an external order and arrangement* for the protection and security of the masses of particular ends and interests which have their subsistence . . . in this universal. . . . [P]articularity itself makes this universal which is present in its immanent interests, the end and object . . . of its will and activity, with the result that *the ethical returns* to civil society as an immanent principle. . . .⁴²

This does not make it sound like Hegel thinks civil society has failed. It certainly does not sound like he thinks it must fail. It sounds, instead, like he thinks civil society needs the police to *avoid* failure. And Hegel certainly seems to be suggesting that the police *can* help avoid failure—even help civil society reach the universal and return

to the ethical. Hegel then moves on to discuss the corporation and its contribution to the avoidance of civil society's failure.

We should also recall, as we saw earlier in chapter 1, that Hegel's methodological approach is to focus on the insufficiency of each stage in order to move us along toward a higher stage of right.⁴³ So it could well be that the inability of civil society to solve the problems it generates is being used by Hegel to move us along toward corporations and the state. In focusing on civil society's insufficiency, then, Hegel could be setting up his transition, not admitting defeat, as the Marxists would like.

But we are going to need more than this. For my interpretation to hold up in opposition to the Marxist one, it will have to be the case that there actually is a solution to the problem of civil society. I have suggested that while unrestricted civil society alone and of itself cannot overcome polarization and pauperization, with the assistance of the state acting through the police and the corporations, it can. This is something the Marxists would simply deny. For them, Hegel sees the problem of civil society, sees that it cannot be solved by civil society, and the Marxists think that in fact it cannot be solved at all—short of eliminating civil society. Thus, for them, Hegel fails and must fail. For my counter interpretation to hold up, besides seeing the problem of civil society and seeing that it cannot be solved by an unrestricted civil society itself, Hegel must go on to hold that the problem can be solved at a higher level, and for us to take this seriously it must actually be the case that it can be solved at that level. These are the issues that must be addressed in the rest of the present chapter.

In the first place, then, it is quite clear in Hegel's texts that he holds that it is in fact the state's task to prevent the development of poverty. It needs to "prevent a rabble from emerging."⁴⁴ It "must make the effort to avoid the damaging consequences that can arise from this inequality."⁴⁵ Elsewhere, "On the general plane it is for the state to prevent universal need by taking appropriate measures. . . ."⁴⁶ Again, "The whole community must also ensure that individual citizens can satisfy their needs, i.e., that the commodities are available in adequate quantity and at not too high a price. . . ."⁴⁷

Furthermore, it is Hegel's view that polarization and pauperization constitute a "wrong inflicted on" the poor.⁴⁸ As Wood puts it, they "are victims not of some natural misfortune, but of a social *wrong*. . . . For Hegel, poverty in civil society is not an accident, or a misfortune or the result of human error or vice. . . ."⁴⁹

Moreover, for Hegel, this wrong is the result of the normal processes of civil society. This is not the Smithian view that self-seeking, through an invisible hand, produces the common good more effectively than if it had been consciously sought.⁵⁰ The invisible hand can produce polarization and pauperization. Thus, as Williams puts it, advocates “of letting ‘the market’ solve the problem of poverty, are not only incoherent . . . but also unethical because there is no market solution to this problem. The market economy, functioning as it is supposed to, generates the problem. . . .”⁵¹

Additionally, what we have here, for Hegel, is a matter of rights, “Civil society must protect its members and defend their rights. . . .”⁵² Also, “every human being has a right to demand a livelihood from society.”⁵³ And, it is the case “that the livelihood and welfare of individuals should be *secured*—i.e., that *particular welfare* should be *treated as a right* and duly *actualized*.”⁵⁴ Even more, this right is understood as a positive right, not merely a negative right:⁵⁵

The essential goal of members of civil society is being provided for. . . . The universal policing authority can work only to make trade and business bloom on the whole, but this does not provide for the particular needs of individual humans, even though it is precisely the particular that is here the goal, and individual humans have, as such, the right to demand that they be provided for.⁵⁶

Justice is a major factor in civil society: good laws will cause the state to flourish. . . . But since I am completely involved in particularity, I have a right to demand that, within this context, my particular welfare should also be promoted. Account should be taken of my welfare, of my particularity, and this is the task of the police and the corporation.⁵⁷

For Hegel, this will require conscious regulation from above.⁵⁸ The function of the police,⁵⁹ for Hegel, is to keep in view the general end of civil society, that is, the satisfaction of need, to understand the way in which the powers composing civil society act, and to maintain that end through these powers and against them.⁶⁰ In an earlier text, Hegel said, “in this system what rules appears as the unconscious and blind entirety of needs and the modes of their satisfaction. But the universal

must be able to master this unconscious and blind fate and become a government.”⁶¹ Avineri claims that Hegel is “one of the first to propose something which has . . . many of the characteristics of the modern welfare state. Time and again, Hegel mentions taxation as the great equalizer and instrument for income redistribution. . . .”⁶²

Thus, I think we should understand Hegel as claiming, *contra* Smith, that there is a necessary tendency toward polarization and pauperization in civil society.⁶³ We cannot stop this movement toward poverty that is inherent in the system. We cannot eliminate this development. Certainly, unrestricted civil society alone cannot. But we can work against it. We can counteract it. Indeed, the very concept of charity itself implies this. Charity does not eliminate poverty or the forces that produce poverty. Charity simply eases the poverty. So, while we do have a necessary and un-eliminable tendency toward poverty in civil society, it does not follow that Hegel thinks this means the failure of civil society, as the Marxists would have it. He thinks the tendency can and must be counteracted.

How then can it be counteracted? One way is through taxation.⁶⁴ In an earlier text, Hegel writes that the “inequality of wealth is accepted if heavy taxes are levied; this lessens envy and averts fear of distress and robbery.”⁶⁵ Moreover, this fits with his view, already cited, that it is better if charity is handled by the state:

On the general plane it is for the state to prevent universal need by taking appropriate measures . . . individuals *can* act in benevolent fashion using the machinery provided by the state. Subjective assistance must be reduced to the minimum because it can harm instead of helping.⁶⁶

This again confirms the notion that unrestricted civil society cannot solve its own problems and that we are forced to go beyond unrestricted civil society. Individual charity, that is, charity in civil society, is contrary to the principle of civil society. It is harmful. It undermines the recipients’ feelings of self-sufficiency and offends their honor.⁶⁷ It humiliates them.

Corporations

Humiliation is precisely what corporations are able to avoid. Within the corporation, Hegel says, charity “loses its contingent and unjustly . . .

humiliating character. . . .”⁶⁸ The corporation transforms external assistance into self-insurance—something owed one from one’s communal self-help association. The individual contributes to the association, and receives back from it when in need. This is the individual’s *right*.⁶⁹ It is something that *belongs* to the individual.

A corporation, under supervision by the public authority, looks after its own interests, admits members in accordance with objective qualifications of skill, educates them so as to make them eligible for membership, and protects them against particular contingencies such as unemployment.⁷⁰ The corporation preserves the principle of self-sufficiency and honor that is central to civil society. It is the individual’s own doing as a member of a corporation that protects the individual from the contingencies of civil society. Individuals do not merely depend upon others; they actively provide for themselves as members of an association.

The problem of civil society, we have said, is that it produces serious poverty. This *could* be solved by charity, but that is undesirable in that it would be at odds with the principle of civil society—self-sufficiency. Moreover, it is humiliating.⁷¹ The corporation, then, if it does not solve the problem of civil society, at least goes a long way toward doing so.⁷² Hegel says that England has “the most abominable poverty and the most extensive rabble, and a great part of this cancer is to be blamed on the abolition of the corporations. . . .”⁷³

Membership in a corporation gives one standing and dignity. One comes “to be recognized both in one’s own eyes and in the eyes of others.”⁷⁴ Membership in a corporation is evidence of one’s skill, regular income, and means of support. It is evidence that the member is *somebody*. One “commands the respect due to one in his social position.”⁷⁵ One is also recognized as an active member of a “whole, whose aim is to promote the welfare of society in general.” The individual’s activity is not mere self-seeking.⁷⁶ Hegel writes:

citizens play only a restricted role in the universal business of the state, yet it is essential to provide human beings, as ethical, with a universal activity beyond their private ends. This universal, which the modern state does not always provide, is found in the corporation. We saw earlier . . . that in fending for themselves . . . the members of civil society also act for others. But this unconscious necessity is not enough; it becomes a known and thoughtful ethicality only within the

corporation. . . . [I]ts purpose is . . . to make an isolated business . . . ethical and to elevate it to a sphere within which it gains strength and dignity.⁷⁷

Groups that have the same vocations, concerns, and interests, for Hegel, should be formed into corporations so that they develop their skills and take shape as communal associations. The atomism of modern times, in which all fend for themselves, abandons the individual to contingency and is harmful:

Through this spirit Germany disintegrated into atoms and the empire went into decline. . . . The towns formed alliances, and so the Hanseatic and Swabian Leagues came into being, and in this way civil society was formed by means of corporations. . . . This was the high tide of civil life; enjoyment lay in what was communal, . . . Now this spirit is undermined, so that people are ashamed of their class, are unwilling to be seen as members of it, and take pride in themselves alone.⁷⁸

In this passage we see especially clearly the importance of corporations for civil society. Civil society does not give rise to corporations; rather corporations gave rise to civil society. Then, civil society brought the decay of corporations. In Hegel's view, corporations ought to be revived to combat this.

A corporation, Hegel takes pains to say, is not a guild.⁷⁹ On the other hand, neither is it a modern labor union. Hegel's corporations include managers and owners, not just the workers, in a given branch of business. No union would allow management to have a say in union matters, but, on the other hand, there certainly are cases where unions will struggle to place union representatives on boards of directors so that workers have a share in management. This especially is the goal of socialist and social democratic labor unions.⁸⁰ Moreover, Works Councils, as G. D. H. Cole points out in *Fabian Socialism*, are bodies that would represent "every grade and group in the factory as partners in the common adventure of making it a success." They would not be confined just to trade union members.⁸¹

In many other ways, labor unions perform the same functions that Hegel wants from corporations. Labor unions work to get their members health, retirement, and unemployment benefits, and may assist in providing or supplementing these themselves. They certainly uphold the notion

that these are rights owed the worker for the worker's contribution, not charity given to those who failed to be self-sufficient. They can also seek to help workers find employment, as well as struggle for higher wages and better working conditions. Unions can also train workers and certify their skills. Labor unions certainly see themselves as providing not merely for their own narrow self-interests, or those of their members, but for the common good of all workers in society—the universal. They also enable their members to gain a sense of dignity, self-respect, and pride. They provide their members a sense of having accomplished things for themselves and for others. Active union members can have a powerful sense of agency—and agency for the universal.

At any rate, it is the view of Wood, Hardimon, and Lakeland that the functions of Hegel's corporations and of modern labor unions overlap at least in certain ways.⁸² On the other hand, Cullen does not even think that factory workers would be allowed into Hegel's corporations.⁸³ And Wood seems to agree.⁸⁴ I think, with Prosch, that this is a mistake.⁸⁵ Hegel may exclude day laborers from corporations,⁸⁶ but a factory worker is not hired by the day.

It follows, then, that if we can "prevent an excess of poverty and the formation of a rabble," if we can prevent "a large mass of people [from sinking] below the level of a certain standard of living," and if we can reinvigorate corporations whose abolition was responsible in great part for this cancer, then, as we have seen, corporations can go a long way toward handling the problems connected with poverty in civil society—thus allowing us to avoid the Marxist conclusion that civil society must fail.

However, for this solution to work, it would first have to handle another problem. In §§243–45 quoted above, Hegel also says that, besides charity, there is another response that we could have to the poor in civil society:

[T]heir livelihood might be mediated by work (i.e. by the opportunity to work) which would increase the volume of production; but it is precisely in overproduction and the lack of a proportionate number of consumers who are themselves productive that the evil . . . consists . . . and this is merely exacerbated. . . .⁸⁷

The notion that economic crises are crises of overproduction can also be found in Marx.⁸⁸ As Knowles points out, to hold that crises are

crises of overproduction is a mistake. It is certainly not the modern Keynesian view.⁸⁹ Hegel does realize that overproduction is overproduction only relative to consumer demand. But he does not seem to realize that the opportunity to work could increase discretionary income and thus increase demand. It would follow, then, that handling the problem of poverty would be a bit easier than Hegel thought it would. It would not be necessary to shy away from job creation in favor of charity. So corporations, and certainly unions, which work to boost, maintain, and stabilize employment and wages, would contribute to counteracting poverty, and would not exacerbate it. As for the remaining poor who are not employed and not members of corporations, they would have to rely on "provision . . . made by the state."⁹⁰

Anticipating what Hegel will say when we get to the state, there is one more thing we must say about corporations. It is Hegel's view that deputies to the national assembly should be the delegates of corporations. He writes,

the deputies are elected by the various corporations. . . . It is clearly in the general interest that the deputies should include individuals who are thoroughly familiar with, and personally involved in, each particular major branch of society (e.g. commerce, manufacturing industries, etc.). . . . If the deputies are regarded as *representatives*, this term cannot be applied to them in an organic and rational sense unless they are *representatives* not of *individuals* as a crowd, but of one of the essential *spheres* of society, i.e. of its major interests.⁹¹

Such an electoral system may strike us as odd, but, as Wood points out, in the constitutional reforms proposed for Prussia by Humboldt and Hardenberg, which Hegel supported, political representation was to take place chiefly through corporations.⁹² Moreover, socialists often favor this sort of representation. After all, if we think of corporations as unions, or as like unions in certain respects, then such associations could represent the interests of a majority and work to ensure as a matter of justice the effective representation of those interests. Moreover, it is Hegel's view that representation should not be understood merely as the representation of one individual by another, but the representation of an interest by someone who actually has that interest.⁹³ Despite the presence of management in Hegel's corporations, it is conceivable that the interests of workers, if they have an active say in corporations, could end up being

better represented through corporations than otherwise. Moreover, being active in corporations that can send deputies to the national assembly could well have the educative effect that Hegel expects from such assemblies,⁹⁴ that is, it could function to educate workers, help them see the relation of their particular interests to the universal, and allow them to arrive “at *true thoughts* and *insight* with regard to the condition and concept of the state and its affairs, thereby *enabling* [them] to *form more rational judgements on the latter*.”⁹⁵

It is Hegel's view that,

it is extremely important that the masses should be organized, because only then do they constitute a power or force; otherwise, they are merely an aggregate, a collection of scattered atoms. Legitimate power is to be found only when the particular spheres are organized.⁹⁶

Moreover, this is crucial to establishing the sort of bottom up organization that Hegel wants to have between civil society and the state. He wants civil life to be “governed in a *concrete* manner from below.”⁹⁷ While government will be divided into abstract branches run by special officials administering civil society from above:

What is difficult is making the branches meet again both at the top and at the bottom. The policing and judicial powers, for example, take their separate courses, but in each particular case they again coincide. The usual expedient adopted to meet this difficulty is to appoint a chancellor, a prime minister, or a president of a council of ministers in order to simplify control at the top. But the result of this is that once more everything may have its source in the minister's power. . . . A system of this kind was introduced by the French Revolution, elaborated by Napoleon, and still exists . . . in France today. On the other hand, France lacks corporations and local governments . . . , i.e., circles wherein particular and universal interests meet. . . . [T]he proper strength of the state lies in these associations. . . . In them the government meets with legitimate interests that it must respect, and . . . individual humans find protection for the exercise of their rights and so link their idiosyncratic interests with the maintenance of the whole.

For some time past organization has been from the top down, and the greatest effort has been put into such organizing, while those who are below, the mass of the whole, have been left more or less unorganized. . . . And yet it is of utmost importance that the masses should be organized, because only so do they gain power, only then do they become a power. Otherwise they are nothing but a heap, a bunch of scattered atoms. Power is legitimate only when it is contained within particular spheres that are organically arranged.⁹⁸

As was said at the beginning of the present chapter, for Hegel, unlike Marx, civil society is a part of *Sittlichkeit*. It gives particular interest free reign yet brings it back to the universal and reinforces community. Indeed it is particular interest that realizes the universal. It is true that, like Marx, Hegel thinks civil society has a necessary tendency toward polarization and pauperization. But Hegel thinks this tendency can be counteracted, especially so by corporations. And thus, unlike Marx and like Durkheim, he thinks that with the assistance of corporations civil society can generate its own solidarity.⁹⁹ It should be pointed out that Durkheim saw corporations as consistent with socialism.¹⁰⁰

At any rate, to conclude the treatment of corporations: for the conservative, poverty in civil society is a mere accident, and perhaps due to character (or the lack of it). For the liberal, poverty is determined primarily by social conditions, not character. Nevertheless, poverty is still an accident that can be remedied, for the most part, simply by insuring the smooth functioning of the market. For Marxists, poverty is a necessary tendency of capitalist civil society that cannot be overcome short of abolishing civil society. For Hegel, poverty is a necessary tendency of civil society, as it is for Marxists, but it can be counteracted, though not by the market itself as for liberals. It would require additional action by the state acting through the police and through corporations.

Nor does Hegel hold, I have already argued, the conservative position on charity, that it is humiliating and should not be given. The conservative insists that self-help is the only alternative. But neither does Hegel hold what might be called the liberal position on charity, which simply insists on charity and does not pay that much attention to the humiliation involved. Hegel certainly does believe in self-help, but like a socialist, he believes in the collective self-help of small communities (that is, corporations) assisted by the state and by high taxation.

For the liberal, all individuals have a right to seek their own welfare. If they fail, then the state should help out. For the conservative, the most the state should do is assist failed individuals in helping themselves. Hegel goes much further than the liberal: I have a *right* to demand that my welfare be realized.¹⁰¹ It is the task of the police and the corporation to see to this, which is to say that what is required is a combination of collective self-help and state assistance. Again, this is more like the socialist than like the liberal or conservative.

The Hegelian view that the market produces polarization and pauperization when it is functioning normally is not a capitalist view. For capitalism, polarization and pauperization result only from some sort of accident, aberration, or mis-functioning. Yet the solution, for Hegel, is not to abolish the market, which Marxists think is the only possible solution. Hegel is holding a middle position, a position that is likely to look like that of a left-wing nut to the capitalist and like that of a naïve bourgeois apologist to the Marxist. For Hegel, you keep the market, a market with a necessary tendency to produce polarization and pauperization, but you use the police and corporations to prevent that tendency from being realized. Avineri complains that Hegel only tries “to mitigate some of the harsher aspects of poverty . . . he is unable to provide a radical solution.”¹⁰² In other words, Hegel does not propose to eliminate civil society or its necessary tendency to produce polarization and pauperization. Hegel just wants to control the market and prevent its tendency from being realized. But if Hegel’s state can succeed in this, then it means that civil society avoids failure. It means that it does *not* fail—as the Marxists think it must. It would mean that Hegel is right and the Marxists wrong on civil society.

The question, then, is whether or not we can actually control the market enough to avoid the failure of civil society? My answer will be that such a strategy is rather close to that of social democracy—and it would not be easy to argue that social democracy has failed here. Hegel is not a social democrat. He had never heard of them—they did not yet exist in his era. But his views anticipate theirs.

The Solution

At this point, one still might want to object to my interpretation of Hegel. My argument is that Hegel does not admit that the problems of

civil society have no solution at all, but merely that unrestricted civil society is unable to solve its problems *by itself*. It needs the assistance of the state acting through the police and through corporations for a solution. But if this is to be accepted as a plausible way to read Hegel, why then, it might be argued, doesn't Hegel go on to give us the *all* details of this solution—and clearly convince us that they can actually solve the problem? After all, in the preceding section of this chapter, at least to a considerable extent, I had to pull things out, work them up, and argue for a solution myself. Hegel did not do that for us—at least not clearly and in detail. The Marxists would say that Hegel did not present us with a clear, detailed, and complete solution *because* there is no solution to the problems of civil society—and perhaps Hegel even came to see this himself.¹⁰³

But there is another possibility here. It may be that Hegel thinks he *has* provided us sufficient detail in what he has said about the activities of the police and corporations. He may not have thought further detail was necessary. It could be that, while Hegel did think the problems of civil society were serious, he did not think them to be as serious as the Marxists came to think they were, and it never occurred to Hegel to think they would require the elimination of civil society. After all, Hegel wrote at an earlier stage of the development of civil society and its problems. And it may well be that he simply thought that the activity of the police and the corporations, as he had sketched them, were sufficient to explain how to counteract the negative tendencies of civil society, and to say more than he already had would be for the philosopher to get involved in details with which philosophy has no expertise. Hegel, for example, thought that Fichte inappropriately concerned himself with such matters in perfecting the details of his passport regulations.¹⁰⁴ The details of the economy should be the concern of civil servants, who just deal with them. What these civil servants have to deal with are just facts in the world that need to be, and *can* be, handled—as Hegel's student, Gans, thought.¹⁰⁵ In other words, Hegel does not avoid giving us the details of a solution because it would be impossible to do so, but because—beyond what he had already given us—he thought it would be a practical matter that could effectively be carried out by competent civil servants without philosophical micromanagement.

But if this were to be accepted as an accurate description of Hegel's attitude, then the Marxist is going to hold that Hegel is just hopelessly naïve. In the real world, the problems of civil society cannot be solved

short of abolishing civil society—and certainly not by anything so petty as the activity of bureaucrats. Those are just the facts.

But are they? Social democracy would not think so. Social democracy did not exist in Hegel's day, but just as Hegel anticipated the Marxist problem of a polarization of classes and the pauperization of the proletariat, so it seems to me he anticipated the social democratic, not the Marxist, solution to this problem.

I am not suggesting that Hegel would be a social democrat if he were alive today. I am not suggesting that social democracy grew out of or was inspired by Hegel. I am merely suggesting that there are similarities here and that these similarities can throw some light on Hegel's thought—and on how we might avoid interpreting it such that it ends up with problems it need not have. I also think—and this will not interest all readers—that if we are leftists ourselves, these similarities will help us find value in Hegel that other leftists have missed.

By a social democratic society, I mean a society in which (unlike communism or socialism) the means of production are not taken over by the state and converted to public ownership. Social democracy does not find that to be necessary.¹⁰⁶ There may be some public ownership, but there are markets, private ownership, buying and selling, and thus plenty of room for civil society. Social democratic societies can vary greatly in the proportion of public to private ownership and of regulated to unregulated markets. Sweden, for example, has very few major industries that are publicly owned.¹⁰⁷

Social democracies are mixed economies. They differ from societies that are simply capitalist in that the state has a right and a duty to control the economy for the general welfare. The market is not allowed to do whatever it wants. The task of the state is to prevent poverty, and citizens have a *right* to this, as they are not thought to in capitalist society. For social democrats and for Marxists, as for Hegel, it is the case that the market has a necessary tendency to produce a polarization of classes and the pauperization of the proletariat. That is something capitalists tend not to want to admit. For social democrats and for Hegel, we do not try to eliminate private property and the market, as for Marxists. Instead, we try to counteract their negative tendencies and control them.

For Thomas Meyer, social democracy wants as much of a market as possible, but it also wants a just distribution of social goods above and beyond market outcomes. It would exempt from the play of market forces health, education, housing, social security, the environment,

transportation, and urban planning.¹⁰⁸ In a social democracy, for Meyer, the democratic state is obliged to offer appropriate security against all risks arising out of the social structure provided these are of a political nature, involve serious limitations on fundamental rights, cannot be reliably countered by individual or collective self-help, and can be managed effectively by means of political steering measures available to society.¹⁰⁹

Social democrats came to see that in a complex industrial society it is impossible to eliminate the market without generating economic disaster, lack of diversity, and the absence of freedoms. Social democracy rejects this aspect of communism. For better or worse, we must accept the market. But it must be continuously watched and adjusted. It has some positive tendencies. It encourages entrepreneurial innovation, diversities of many sorts, and some freedoms. But it has some very negative tendencies. It tends toward a polarization of classes and serious inequalities in power. It produces serious poverty. And it eliminates freedoms for many. In a social democracy, the forms of governmental control and the extent of public ownership of industry will vary—as determined by elected representatives. But the point is that the government regulates the economy in the best interest of society as a whole rather than for private profit.¹¹⁰ A social democratic society will reject the primacy of negative liberties and rank them on a par with positive liberties. It will reject the identification of freedom with property and replace it with a concept that balances the liberties of all against property relationships.¹¹¹ Or, much as Hegel put it:

The different interests of producers and consumers may come into conflict, and, although the right relation between the two may on the whole arise of its own accord, yet the adjustment of the two calls for a regulation standing above both sides and put into operation consciously. . . . [T]he freedom of trade ought not to be of such a kind as to endanger the general weal.¹¹²

In another passage, Hegel says that “the health of others is a more important right than is the running of a business.”¹¹³

It is also the case that corporations and the police, for Hegel, function much as do labor unions and departments of labor and commerce for social democrats. They are expected to work with the state to counteract polarization and pauperization, help control the market, and

contribute to the welfare of all. For social democrats, the connection between labor unions and the state would be mediated by a labor party, which would seek to get itself elected to the national legislature. For Hegel corporations directly elect deputies to the legislature. Corporations like labor unions are not to be marginalized, suppressed, or eliminated, which is the tendency in capitalist society. They are encouraged, supported, even institutionalized. They play a positive and central role in governance. Moreover, labor unions, for social democrats, as for Hegel's corporations, are an attempt to gain a say in management for workers.¹¹⁴

Meyer points out that the United States delivers a volume of social services nearly as great as the European states but predominantly through voluntary private associations. He thinks serious objections can be raised to this. The humiliating experience of social insecurity is not eliminated when you are in doubt about the type and scope of benefits available to you. You have no *rights* here. Second, it may undermine your self-esteem and social respectability to depend on the good will of private individuals and organizations, which is very different from a legal claim of which you as citizen are the co-author.¹¹⁵ Hegel would attempt to accomplish the same sort of thing through corporations, and, for those without corporations, by "provision . . . made by the state."¹¹⁶

Alienation

But before we conclude that Hegel, like social democracy, can avoid the failure of civil society expected by the Marxists, there is another issue that must be addressed. As Avineri put it (in a passage quoted at the beginning of the second section of this chapter, "The Failure of Civil Society?"), markets cause not only polarization and poverty, but also alienation.¹¹⁷ Such market alienation has been especially well described by Marx. In chapter 1 of volume I of *Capital*, he introduces the term "fetishism" to describe what in earlier writings he would have called alienation in exchange or alienation in a market economy.¹¹⁸

Marx tells us that producers put their products on a market; independent, impersonal, autonomous market laws set in; and people come to be controlled by these market forces independently of their will or consciousness. Fetishism, Marx tells us, means that relations between people come to appear as relations between things.¹¹⁹ Market laws are relations between things—relations between products on the market.

With highly developed markets like those found under capitalism, one's whole world comes to appear as a set of abstract, impersonal relations between things, not as relations between persons, and certainly not as relations under the control of persons. And these market laws come to dominate the persons. This becomes especially obvious by the time you get polarization and pauperization, but it is occurring less visibly at all times.

Fetishism, then, means an absence of freedom brought about not by the evil intentions of an individual, group, or class, but by our very own activity, which gets out of our control, turns upon us, and dominates us, without our understanding what is going on. Indeed, it all appears normal and natural. This means that markets are not a realm of freedom. They are highly coercive, though they hide that coerciveness.

Fetishism or alienation occurs because people produce independently (separately and privately) and only meet in the market. And thus they have no control over the market laws that set in—basically because they are not organized, they have no cooperative plan, and they have not come to understand what is going on. This suggests (and it was clearly Marx's view in his earlier writings) that markets produce fetishism or alienation. If you have a market, you will have alienation.¹²⁰

But there is a problem with that view. At the end of chapter 1 of *Capital*, Marx gives four examples of societies or situations free of fetishism. The first three (Robinson Crusoe alone on his island, the feudal economy of the middle ages, and the patriarchal industry of a peasant family) are all free of fetishism simply because there is no exchange (no market, no buying and selling) present. There would therefore be no market laws that could develop and come to dominate. Relations would appear as direct, immediate relations between persons, not as abstract, impersonal relations between things.¹²¹

But the fourth example is a problem. It is clearly that of a *socialist* society—and so we would expect it to be free of fetishism or alienation (as, indeed, Marx claims it is). But at the same time it is also a socialist *market* economy and so we might expect fetishism to be present because there is a market.

Marx tells us that post-capitalist society could take different forms, which would vary with the productive organization of the community and the degree of historical development of the producers. Marx chooses to examine a socialist society where there is common ownership of the means of production, where the workers are freely associated, and where there is social planning.¹²² This society is also much like the first stage

of communist society as described in the *Critique of the Gotha Program*. Workers earn incomes in proportion to their contribution—that is, in proportion to the amount of time they labor. Thus there might be something like labor certificates (as there are in the *Critique of the Gotha Program*) that workers receive for their labor and exchange for goods on a market.¹²³ It is quite clear in the *Communist Manifesto* that the first stage of post-capitalist society would be a market economy. There would still be an income tax, and thus there would obviously have to be incomes to tax and, presumably, goods to exchange income for. There would also still be rents on land, credit (now centralized), and a national bank.¹²⁴

So, if there is a market, why isn't there fetishism or alienation? Can a socialist market society have market exchange and avoid alienation? Marx obviously thinks so if at the end of chapter 1 of *Capital* he lists it as an example of a society free of fetishism. Clearly, Marx has decided that not all forms of market exchange produce fetishism.

What causes fetishism, we have seen, is that people produce independently (separately and privately) and only come into social contact when they bring their goods to market. They dump their goods on the market and market laws set in that they neither understand nor control. And these market laws come to dominate them. They can even cause polarization and pauperization.

But in this socialist market society, there are no isolated, independent producers. Producers are associated before bringing their goods to market, even before producing them. They have a common plan and they consciously regulate their production and exchange according to this plan.

In short, the producers control their exchange instead of being controlled by it. There is no unregulated market that they neither understand nor control. Rather, they employ the market as a tool—as a consciously controlled *means*—to achieve commonly decided upon *ends*. And thus there is no fetishism or alienation. In other words, to end fetishism, persons relating to persons as persons must be able to understand and control the impersonal forces of the market for the benefit of persons as a whole. Instead of being buried in particularity, they must consciously act to realize the universal.

Marx, it is true, is not describing a social democratic society at the end of chapter 1 of *Capital*. He is describing a socialist society, one with common ownership of the means of production. But such ownership is not what ends alienation or fetishism. What does so is the ability of

society to understand and control the market, rather than be controlled by it. And to do that, society has to be sufficiently associated to have a common plan. Quite clearly, this too is what a social democratic society seeks to do through labor unions, a labor party, and a labor government.¹²⁵ I have been arguing that Hegel's treatment of a civil society regulated by the police and corporations anticipates this same strategy. If this is correct, we can now see that social democrats, as well as Hegel (or Hegelians on his behalf), could refute the Marxist argument that alienation is unavoidable in a market economy—and *could do so with arguments adapted from Marx himself*.¹²⁶

Thus, while there are similarities between Hegel and social democracy, which will help us free ourselves from the Marxist interpretation, nevertheless, as we will see in the next chapter, there are also differences between Hegel and social democracy that we will have to attend to.

Sittlichkeit: The State

Democracy vs. Monarchy

The argument of chapter 5 was that Hegel's views, in many ways, are like those of social democrats. In "Section 3: The State" of "Part Three: *Sittlichkeit*," it becomes quite clear, however, that Hegel is not much of a democrat. He relegates democracy to a past stage in the historical development of the state and considers it superficial to view democracy as something that could be an object of choice in the modern world.¹ Hegel is committed to hereditary monarchy—not even to elective monarchy.² Moreover, his monarch has sole responsibility for the command of a standing army—not a citizen militia, which democrats would tend to favor.³

Furthermore, citizens do not even directly elect representatives to the legislature.⁴ Membership in the upper house is hereditary;⁵ and representatives to the lower house are elected through corporations.⁶ Moreover, Hegel does not believe in universal suffrage. For him, "It goes without saying that day laborers, servants, etc., are [not allowed to vote, but] are excluded as not being members" of a corporation.⁷

He also seems to believe in financial qualifications for holding positions of authority within corporations.⁸ There are also property qualifications for membership in the Estates Assembly, at least for those who enjoy a hereditary seat in the upper house—they must be wealthy landowners.⁹ Representatives to the lower house, for Hegel, are "elected without regard to property qualifications. . . ." And they are elected through corporations "from which no actual citizen . . . is excluded, regardless of means." But day laborers and servants, we have just seen, are not allowed into corporations. And Hegel thinks most of those elected

to the lower house will have already held other government posts for which there would have been property qualifications.¹⁰

Generally speaking, for Hegel, one of the main functions of the legislature is to give citizens a chance to express themselves and for them to be educated.¹¹ But they basically lack insight and should be kept away from important matters.¹² And what must definitely be avoided is opposition between the legislature and the executive.¹³ Certainly, the legislature should not have power over the state.¹⁴

Moreover, Hegel's attitude toward public opinion and free speech is not what one would hope. He realizes that it can be dangerous to deny freedom of speech and he admits that in the modern world "each individual wishes to be consulted and to be given a hearing."¹⁵ Moreover, he thinks this is acceptable, given a stable government, basically because it is innocuous.¹⁶ In general, his view of public opinion is that it contains as much truth as error and is to be respected as much as it is to be despised.¹⁷ It requires a "great man to discover the truth within it . . ." and to tell the age "what its will is. . . ."¹⁸

While Hegel is not much of a democrat, nevertheless, it cannot be said that he is an authoritarian, and he is certainly not the totalitarian Popper thinks he is.¹⁹ Hegel wants governance "from below." He rejects control "from above," certainly of the sort "introduced by the French Revolution and further developed by Napoleon. . . ." He wants universal and particular interests to come together and he thinks this is only possible if the masses are organized as a power and cease to be merely a collection of scattered atoms.²⁰

Such governance "from below" may not seem to fit with the fact that Hegel wants a monarch, but Hegel certainly does not want anything like the sort of absolute monarch that during his youth had been overthrown in the French Revolution. At the same time, and just as much, he does not want a legislative power that could engulf the executive, as he thinks also happened at times during the French Revolution.²¹ Thus, while it may strike us as odd, Hegel wants a monarch because he does *not* want strong government—or that is what I will try to show.

By a sovereign, one generally means the single highest power and legitimate authority in the state—that is certainly what Hobbes meant.²² That is not, however, what Hegel means by a sovereign. He wants to deemphasize power, certainly the power of the government, but also the power of the people. And, after all, if you understand sovereignty in terms of power, it has to occur to you that the people can be very

powerful, and thus that claims to sovereignty could be made on their behalf. Hegel wants to avoid that.

Hegel does agree that there must be a final highest authority. Lacking any other, he even holds that “the *ultimate* decision on major issues and important concerns . . . of the state” was—in the ancient world—decided by oracles, entrails, and bird flight.²³ In a modern rational state, this of course would be unacceptable—“the ultimate formal decision is for the monarch” to make. “He has to say, ‘I so will it. . . .’”²⁴ The monarch must be sovereign.

In feudal times, Hegel thinks, the monarch was not sovereign.²⁵ The state was a loose aggregate rather than a unity; offices were the private property of individuals; and their obligations to the whole were left to their own whim.²⁶ In the *Phenomenology*, Hegel spoke of a haughty vassal, willing to give council and advice, but not willing to actually serve and obey the monarch.²⁷ In *The German Constitution*, Hegel made it clear that the haughty vassal was especially a problem in Germany—and stood in the way of its development as a modern state.²⁸ Germany was nothing but the “sum of the rights which the individual parts [had] extracted from the whole . . . to ensure that no power [remained] in the hands of the state. . . .”²⁹ Hegel is very concerned that Germany shed the last vestiges of feudalism and become a modern state. While he does not want the sort of absolute monarch that in the *Phenomenology* finally subordinated the haughty vassal, he does want a real highest authority—a real sovereign. He just thinks it is a mistake to identify sovereignty with mere power and thus arbitrariness.³⁰

Hegel also thinks the people cannot be sovereign because, without the unity the monarch gives the whole, the people would be a formless mass incapable even of being a state, let alone a sovereign.³¹ Sovereignty requires more than an aggregation; it requires organic unity. Particular functions and powers of the state cannot be understood to be separable parts—they must be understood to be *members* of an organism. This is to say that they cannot be separated from the whole without destruction—as a heart severed from the body is no longer really a heart.³² Hegel says, “The nature of the organism is such that unless all of its parts become an identity—if any one of them posits itself as self-sufficient—all must perish.”³³ Sovereignty, Hegel says, is the “ideality of the particular spheres and functions [within the state],” that is, that these are “not independent or self-sufficient” but are “determined by and dependent on the *end of the whole*. . . .”³⁴ A modern state requires such unity. It is incompatible with

the people as a formless aggregate or with haughty vassals fragmenting the state into their own separate spheres of particular right.³⁵

Hegel is an idealist and he takes the state to be ideal, that is, he takes it to be a complex web of ideas, beliefs, values, commitments, loyalties, practices, procedures, offices, institutions, laws, duties, rights, and so forth. It is a complex web of concepts.³⁶ To say that the sovereign is ideal is to say that it brings this complex web, the ideality of the state, into unity—and it expresses that unity. This is to say that the sovereign is not merely a powerful entity outside and above the rest of the state, something that merely directs or controls the state. The sovereign is the unity of the state.³⁷ Any part of the state (an office, a court, a legislative body, certainly a haughty vassal, even the people) that was somehow separated from this unity would cease to be what it is—it could not exist apart from this unity. All the parts of the state are brought into this unity by and expressed through the sovereign.

Moreover, for Hegel, this unity must be the self-conscious unity of a person that can culminate in an “I will.” What is required here is an individual leader.³⁸ In the *Philosophy of Right* and in the Introduction to the *Philosophy of World History*, Hegel speaks of world historical individuals. The greatness of such leaders, he thinks, consists in the fact that they give expression to the next step in the development of world spirit.³⁹ They “translate the will of the national spirit into reality. . . . Individuals fade into insignificance beside the universal substance. . . .”⁴⁰ In the same way, the monarch as an individual is insignificant. The monarch’s particular character is of no importance, “it is only a question of the highest instance of formal decision, and all that is required in a monarch is someone to say ‘yes’ and to dot the ‘i’. . . .”⁴¹ Just as the world historical individual is unimportant except as the channel through which world spirit expresses itself, so the monarch is unimportant except as the channel through which the nation comes into a unity and expresses itself. What might otherwise be seen as an aggregate collection of practices, procedures, offices, and processes comes into an ideal unity that is expressed and actualized in the sovereign’s “I will.” It is the rational organization of the state that makes the person of the regent insignificant.⁴² But while the person is insignificant, the “I will” of the sovereign is quite significant—and it is incompatible with haughty vassals or the people as a formless aggregate that think themselves outside the unity of this sovereign “I will.”

Hegel develops his idealist conception of sovereignty as monarchy, not because he wants strong government, but for pretty much the opposite reason. This can be seen if we contrast Hegel's concept of sovereignty to that of Hobbes. For Hobbes, I have argued elsewhere, the only thing holding the state together is the power of the sovereign. If the sovereign's power were to weaken, the subjects would risk return to the state of nature—a war of each against all. It is as if the sovereign alone holds together a handful of marbles—if the sovereign were to lose its grip, the marbles would bounce in all directions. This is to say, in effect, that Hobbes has no social theory, only a political theory. He has no theory to explain the coherence of individuals in society apart from political power. For Locke, property and property interest explain such coherence. For Marx, class and class interest do so. For the ancients, custom and tradition did so. Lacking any theory of this sort, the only power that can hold the state together, for Hobbes, is the political power of the sovereign—and thus this power must be absolute. It follows that the more coherence one finds at the social level, the less power one need concede to the government. Thus, Locke can argue for limited government and Marx can even argue for the withering away of the state.⁴³

Hegel too, we have seen in chapter 5, has a sophisticated social theory, a theory of civil society in which, as for Smith and Ricardo, conflicting particular interests work to promote the universal. And if the argument of chapter 5 was correct, that civil society need not end in failure, that polarization and pauperization can be contained, and that civil society can promote organic solidarity and *Sittlichkeit*, then Hegel does not need a powerful monarch. He does not argue for the withering away of the state; indeed, he needs a regulatory state to solve the problems of civil society. But if they can be solved, then Hegel has a state with a rational and stable organization such that the monarch can be insignificant.⁴⁴ The practices, procedures, and processes that make up the state can come into an ideal unity that need only be publicly expressed in the sovereign's "I will."⁴⁵

Still, while we may accept that any state needs a final highest authority, why, we might ask, must it be a monarch? A significant part of the answer might seem to be just that Hegel is unable, or unwilling, to "overleap his own time or leap over Rhodes."⁴⁶ He takes his task to be the comprehension of what is actual, and it is monarchy that is actual in the Germany of his era. It will not be a few decades later for

Marx, but it is in 1821. However, I do not think that this is a sufficient answer—I do not think that Hegel is *merely* trapped in his era. After all, he is very much opposed to an absolute monarch of the sort that had recently been removed in France and he wants to bring about a modern, rational, constitutional monarch that in 1821 did not yet exist in Germany.

Still, our tendency is to want to ask: why not a president? Wouldn't a president be superior to a monarch? While I definitely would not want to replace presidents with monarchs, and while I do not in any way want to be taken to be monarchist, *of all things*, nevertheless, I do not think Hegel is simply caught in his own era and I think he has some very thoughtful reasons for preferring monarchy.⁴⁷

Our instinct is to object to monarchy because we think monarchs too powerful. Far better to have a president that is answerable to, and thus limited by, an electorate. Hegel's response, I think, would be that a president is far *too* powerful.⁴⁸ While the President of the United States is not sovereign, the people are, nevertheless, our President is much more powerful than Hegel's sovereign. Hegel's monarch is marked by its insignificance. All it does is "say 'yes' and . . . dot the 'i'. . ."⁴⁹ A president does a very great deal more than that.

Hegel even rejects an elected monarch. In part, no doubt, this stems from his opposition to democracy, but it also stems from his opposition to the power, and the type of power, elections give to the electors as well as to the elected. Hegel says that elective monarchy:

is the worst of institutions. . . . In an elective monarchy . . . the nature of the relation that holds between king and people implies that the ultimate decision is left with the particular will . . . i.e., a surrender of the state's might at the discretion of the particular will. The result of this is that the particular powers of the state are transformed into private property, the sovereignty of the state is weakened and lost, and finally the state disintegrates within. . . .⁵⁰

Hegel's suggestion that elective monarchy transforms state powers into private property is part of his hostility to feudalism. Wood points out that in Hegel's era elective monarchy "was associated with the institution of the Holy Roman Emperor, who was chosen by a college of six electors. . . ."⁵¹ In the feudal system, rights, including the rights of such

electors, were “not a matter of principle, i.e., of rationality and absolute right. On the contrary, they appear there as single acquisitions, due to the favour of special circumstances and restricted to this or that conjuncture of events. . . .”⁵² Thus the “German political edifice is nothing other than the sum of the rights which the individual parts have extracted from the whole. . . .”⁵³ This meant that the functions and powers of the state were invested in a mere aggregate of independent parts and were in effect the “private property of individuals.”⁵⁴

But Hegel is also opposed to election by the people, which also emphasizes the importance of interests and bases itself on particular will. These interests, for Hegel, legitimately assert themselves in civil society, but if they assert themselves at the level of the state, they threaten to turn the powers of the state into private property.⁵⁵ And certainly the influence of big money in elections is something that many find increasingly threatening in the United States today. An elected president dependent upon the support of interest groups is going to be a more powerful force than what Hegel wants for his monarch, that is, an idealized unity of the state responsible merely for saying “yes” and dotting the “i.”

However, one might not want to agree with my portrait of a Hegelian sovereign as weaker than a president. Hegel, after all, claims that his sovereign cannot be held answerable for its actions.⁵⁶ To understand this correctly, however, we must recognize that Hegel distinguishes the executive from the monarch.⁵⁷ For Hegel, the executive is very definitely answerable; only the monarch is not.⁵⁸ Still, one might think that if the monarch is not answerable, then, after all, it is extremely powerful. But Hegel is quite clear that the monarch “is bound by the concrete content of the advice he receives” from the ministers, such that “he often has nothing more to do than sign his name.”⁵⁹ Thus,

the monarch is completely dependent with respect to the particular content, he knows it not by himself, he can decide only in accordance with the representation that is given him of the matter at hand and of the relevant laws; he decides in accordance with this representation.⁶⁰

Moreover, the monarch’s “every decision must be signed by the competent minister.”⁶¹ It is true that the monarch chooses the ministers and is free to depose them at will, but that does not mean the monarch can simply dominate them—because the ministers are also answerable

to parliament.⁶² Moreover, the monarch does not control the assets of the state, but has an “income only in the form of the household funds allowed to him.”⁶³

On the other hand, though, Hegel says that the sovereign “has direct and sole responsibility for the command of the armed forces, for the conduct of relations with other states through ambassadors etc., and for making war and peace and concluding treaties of other kinds.”⁶⁴ This would seem to grant the monarch a great deal of power, far more than the President of the United States, who, at least in *theory*, if not in fact, cannot declare war unilaterally. Brooks argues that Hegel is inconsistent here: Hegel’s claim that all the monarch need do is to “say ‘yes’ and . . . dot the ‘i’ . . .” is not consistent with his claim that the monarch commands the armed forces and has sole responsibility for making war.⁶⁵ In general, Brooks thinks that Hegel’s monarch “is far more powerful than commonly recognized.”⁶⁶

It is not clear, however, that Brooks is correct. He seems to assume that Hegel’s real commitment is to a monarch that commands the military and has sole responsibility for making war, that this is to be understood in the traditional sense, and that therefore Hegel is not really committed to a monarch that is insignificant and only need “say ‘yes’ and . . . dot the ‘i’ . . .”

But we need not make these assumptions. It is quite possible to go the other way, to take Hegel at his word, to think that his real commitment (repeated several times) is in fact to an insignificant monarch that only need “say ‘yes’ and . . . dot the ‘I,’”⁶⁷ and that this *too* is the way we should understand the monarch’s “sole responsibility for the command of the armed forces . . . and for making war.” In other words, what is needed here too is simply the sovereign’s “I will”—that is, that in the declaration of war the sovereign again has “nothing more to do than to sign his name.”⁶⁸ It is true that the sovereign can fire ministers who do not give the sovereign what the sovereign wants to sign, but those ministers are also answerable to the parliament and the monarch does not control finances, without which the monarch could hardly fight a war.⁶⁹ We simply do not have a powerful monarch here.

To understand why Hegel favors monarchy, we might look back to his treatment in the *Phenomenology* of the rise of absolute monarchy. There we saw that the move beyond feudalism and a haughty vassal not willing to serve and obey the monarch, the move toward a modern centralized and unified state, at least in France, required an absolute monarch.⁷⁰

The problem began earlier in the *Phenomenology*, in “Lordship and Bondage,” where we found a master whose only source of recognition was from a slave. We saw in chapter 4 above that the master could not get adequate recognition from a mere slave. The slave was a nobody—a nothing. Moreover, it was the master who made the slave a nothing. We saw that the recognition that can be gotten from a nothing ultimately amounts to nothing.

As the *Phenomenology* proceeded, we came to see that the more important the recognizer, the more significant the recognized. A noble that serves the greatest of monarchs would end up gaining far more in importance and significance than would a noble that serves the insignificant regent of a third-rate backwater. Recognition from a nobody amounts to nothing. The institutions from which we get recognition need to be raised above ourselves.

But what, then, about the *Philosophy of Right*? There Hegel does not want an absolute monarch. He wants a constitutional monarch—and one who is weaker than a president. He wants an insignificant monarch that only need “say ‘yes’ and . . . dot the ‘I.’”

It might seem to follow from the theory of recognition I have developed in previous chapters that the subjects of such a monarch would be the losers, that they would end up with much less recognition and thus much less significance and reality. To conclude that, however, would be a serious mistake. In fact, Hegel would think the very opposite, that the subjects of such a constitutional monarch would end up with higher recognition and thus greater significance and reality. What is important about monarchy, again, is not power, but rationality and ideality. If the state has become rational, if rationality permeates the ideality of the state, then you do not want a power that could get in the way of this rationality, you want a conduit that simply expresses it, that signs its name, and says “I will.”

The ideality of the state means that the particular functions and powers of the state are not independent or self-sufficient, but are dependent upon and determined by the whole and its ends.⁷¹ The state is a complex web of ideas, values, laws, rights, procedures, offices, and authorities. To say that the sovereign is ideal is to say that it brings this complex web, the ideality of the state, into unity and it expresses that unity. The sovereign is that unity. As Hegel puts it,

In the organization of the state (which in this case means constitutional monarchy), the one thing which we must bear

in mind is the internal necessity of the Idea. . . . The state must be regarded as a great architectonic edifice, a hieroglyph of reason which becomes manifest in actuality.⁷²

What we need in a monarch is a hieroglyph, a symbol, an ideality through which the architectonic edifice of reason is expressed and actualized, not a power that might obstruct this expression and actualization. If we can recognize reason embedded in the state, in its laws and institutions, in its practices and processes, in its history and constitution, then, in so far as the state is rational, it is not something rational citizens can reject. In so far as it is rational, it stands as an authority over us—a legitimate and objective authority. From a modern rational state that is objectively right, we can get higher, more significant, and more valuable recognition than we can get from an absolute monarch—or possibly even from a president beholden to, and expressive of, particular interests.

A rational constitutional monarchy, then, while it has and must have less power, nevertheless, possesses not less, but greater, authority, significance, and importance. It has a higher legitimacy and a higher right. Consequently, the recognition that subjects can get back from such a monarch (as property holders, marriage partners, citizens, and so forth) is more significant and real than the recognition that could come from an absolute monarch.

The Realization of Rationality

As we have seen in previous chapters, it is Hegel's view that *Sittlichkeit* in the modern state means that the reason embedded in the customs, traditions, laws, character, and practices of a people will mold their habits, feelings, and interests in accord with reason. And, indeed, it is Hegel's view that in modern civil society, self-interest in Adam Smithian fashion leads toward and reinforces the universal and rational:

[P]articular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of the family and of civil society), and also that they should, on the one hand, *pass over* of their own accord into the interest of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their own *substan-*

*tial spirit, and actively pursue it as their ultimate end. . . . The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain its fulfilment in the self-sufficient extreme of personal particularity, while at the same time bringing it back to substantial unity and so preserving this unity in the principle of subjectivity itself.*⁷³

As the universal appears in and through this pursuit of particular interest, Hegel says, we have seen in chapter 5, that we see the “shimmering of rationality.”⁷⁴ The task of the legislature, then, is to bring this implicit rationality to full consciousness.⁷⁵ The distinctive function of the legislature is to ensure that members of civil society “participate in . . . knowledge, deliberations, and decisions on matters of universal concern” such that public opinion can arrive at “*true thoughts and insight* with regard to the condition and concept of the state and its affairs, thereby *enabling it to form more rational judgements on the latter.*”⁷⁶

At a higher level, it is the task of the council of ministers to bring such rationality before the monarch.⁷⁷ Hegel says the monarch can decide one way or the other,

but it is inherent in the way the state is organized that the rational must happen. It is organized as an inwardly organic system, wherein particular caprice evaporates in the face of universal necessity. The power of the system is the rational, and it is in this that one must trust and not regard the power of the contingent as preponderant.⁷⁸

Hegel wants a weak monarch and a weak legislature so as not to obstruct the expression and actualization of this rationality. Nor is he even willing to understand the state as a division of and conflict between powers: the legislature and the executive. That too could obstruct the expression and actualization of rationality.⁷⁹ It is Hegel’s view, rather, that the highest civil servants have a deeper and more comprehensive insight, greater skill, and a greater ability to do what is best.⁸⁰ These civil servants, largely of the middle class,⁸¹ are characterized by education, knowledge, and proof of ability checked by examinations.⁸² Such civil servants are of *central* importance in Hegel’s state. It is they that constrain the monarch. It is they that guide the monarch to rational decisions. It is their intelligence that elicits the monarch’s “I will.” What

prevents these ministers from becoming too powerful is their answerability to the legislature. They can be questioned on anything.⁸³

Hegel's monarch is not an arbitrary and capricious absolute monarch, but rather a conduit intended to give expression to the highest values that spirit in its historical development has actualized in the institutions of the modern rational state.⁸⁴ Reason, for Hegel, must be concretized in our institutions, customs, traditions, laws, and practices so that our feelings and interests, as well as our character, disposition, and habits—thus our actions—will be formed in accordance with reason. *Sittlichkeit* requires that social reality be constructed in accordance with reason and reinforce the rational behavior of individual subjects.

The *Philosophy of Right* wants to give us a higher *Sittlichkeit*, a *Sittlichkeit* that combines ancient *Sittlichkeit* with modern *Moralität*. For this higher *Sittlichkeit*, we have seen, it must be the case, first, that individuals be self-determined by universal and rational principles (that is, that subjective reason be moral as for Kantian *Moralität*); second, that this rationality also have been objectified, that it permeate the laws, institutions, and practices of the state such that in obeying civil laws we obey the laws of our own reason (which combines subjective rational *Moralität* with objective *Sittlichkeit*); and third, that interests, feelings, customs, and traditions have been molded by, as well as reinforce, these rational laws so that in satisfying particular interests we satisfy the universal (which further combines elements of traditional *Sittlichkeit* with rational *Moralität*).⁸⁵

We must face a world that is not other, not alien, not an obstacle to our reason. The world must be objectively rational, such that the subject's rational action meets itself, meets reason, in the world, and thus is at home and is reinforced. If right has been actualized, if reason has been realized, if law has been institutionalized, in other words, if the world has been rationally ordered, and if this order has been embedded in our customs, traditions, and practices, if government expresses rather than obstructs this rational order, then individual rationality will not find its world to be an obstacle to its rational action. It will not confront its world as an obstruction, but as a world that will confirm and reinforce it. We will have *Beisichselbstsein in einem Andern*, being with oneself in an other.⁸⁶ Hegel says, "[t]he state is often represented as held together by might, but what in fact holds it together is the fundamental feeling of order possessed by all."⁸⁷

This fit between the subjective rationality of the individual and the objective rationality of the world, when it is supported by custom,

tradition, and feeling, gives us a higher *Sittlichkeit*. And Hegel says, “the history of this genuine formation of ethical life [*sittlichen Lebens*] is the content of the whole course of world-history.”⁸⁸

World History

Hegel told us, as early as the Introduction, that what is to be understood by the term “right” includes not merely *Moralität* and *Sittlichkeit*, but world history. Hegel even tells us that the right of world history “is the highest right.”⁸⁹ He tells us that through interaction with other nations the spirit of a people realizes itself in world history.⁹⁰ This can involve a collision of rights, and such collision will mean that one right gets subordinated to another: “Only the right of world spirit is absolute without restriction.”⁹¹ It is quite clear, then, that without understanding spirit’s realization in world history we cannot understand right in its *highest* sense.

Hegel tells us that world history falls outside the perspective from which justice, virtue, wrongdoing, violence, guilt, and innocence have their significance.⁹² He tells us that “world history moves on a higher plane than that to which morality properly belongs. . . .”⁹³ This, clearly, is to say that world spirit is higher than *Moralität*—but it is *not* to say that world spirit is higher than *right*. And it is *certainly* not to say that world spirit subordinates right to might, as Popper would have it.⁹⁴ Hegel tells us that world history is a:

court of world judgment—a judgment, moreover, that is rendered not merely by its might and a blind destiny. . . . World history is this divine tragedy, where spirit rises up above pity, ethical life, and everything that in other spheres is sacred to it. . . . Nothing profounder can be said than Schiller’s words, “World history is a court of world judgment. . . .” The court of world judgment is not to be viewed as the mere might of spirit. . . . World history . . . is always an advance to something higher.⁹⁵

Hegel also says, “world-history is not a court of judgment, whose principle is force, nor is it the abstract and irrational necessity of a blind fate. It is self-caused and self-realized reason, and its actualized existence in spirit is knowledge.”⁹⁶

World history, for Hegel, very clearly is not merely a matter of power—it is not the rule of might. It is the realization of reason.⁹⁷ World history, while it can violate *Moralität*, nevertheless realizes not only right but the highest right. It is in this sense that we must understand Hegel's claim that the "state consists in the march of God in the world, and its basis is the power of reason actualizing itself. . . ."⁹⁸

World spirit can violate *Moralität*—let us not pull our punches here—world spirit involves a great deal of *evil*:

In the history of the world, we see before us the concrete image of *evil* in its most fully developed form. If we consider the mass of individual happenings, history appears as an *altar* on which individuals and entire nations are immolated; we see all that is noblest and finest destroyed.⁹⁹

If world spirit involves such highly developed evil, how then could it possibly produce right, let alone the *highest* right?

Such a view is not really that unusual. Traditional theology holds that God's providence brings good out of evil. Human evil is used by God to bring about a good that humans neither intended nor foresaw. And, indeed, in the Introduction to the *Philosophy of History*, Hegel says that his "investigation can be seen as a theodicy, a justification of the ways of God. . . ." He says that:

It should enable us to comprehend all the ills of the world, including the existence of evil, so that thinking spirit may be reconciled with the negative aspects of existence; and it is in world history that we encounter the sum total of concrete evil. . . . In other words, we must first of all know what the ultimate design of the world really is, and secondly, we must see that this design has been realized. . . . In order to justify the course of history, we must try to understand the role of evil in the light of the absolute sovereignty of reason.¹⁰⁰

Moreover, it is quite clear that Kant too holds that evil can produce a higher good. He writes:

many assert it [a republic] would have to be a state of *angels* because human beings, with their self-seeking inclinations,

would not be capable of such a sublime form of constitution. . . . The problem of establishing a state, no matter how hard it may sound is *soluble* even for a nation of devils (if only they have understanding) and goes like this: "Given a multitude of rational beings all of whom need universal laws for their preservation but each of whom is inclined covertly to exempt himself from them, so to order this multitude and establish their constitution that, although in their private dispositions they strive against one another, these yet so check one another that in their public conduct the result is the same as if they had no such evil dispositions."¹⁰¹

Given such conditions, the evil of devils can produce a good that one might only expect from angels. Moreover, we have seen in chapter 1, this very same notion is found in Kant's philosophy of history, a philosophy of history that very much anticipates Hegel. In the "Idea for a Universal History," Kant tells us that in history there are two forces at work. The first is the conflict of particular interests; the second is morality. And, for Kant, both lead to the same result. Conflict and war, that is, evil, lead toward morality.¹⁰²

The pursuit of national self-interest impels nations toward conflict, aggression, and war. At the same time, these nations have an interest in commerce and trade. The interaction between these forces, Kant thinks, will eventually lead to peace, international law, and a league of nations. Selfishness and aggression will lead toward morality. As wars become more threatening, destructive, and costly, they become more risky. As they become more disruptive, they interfere with commerce. As nations become more economically interdependent, war poses a bigger and bigger problem for the international market. Other nations will step in to arbitrate, to prevent the war, in order to safeguard their own national concerns. This will start the move toward a league of nations.¹⁰³

At the same time, the second force at work in history, namely morality, would demand just laws and an end to wars. We could not will the opposite—that is, the universalization of war and unjust laws. Morality, for Kant, would also require a league of nations.¹⁰⁴ And the first force, as we have just seen in the previous paragraph, would drive us toward the very same end. War between nations, given their commercial interests, will drive them toward peace, law, and a league of nations. In Kant's view, both morality and war converge toward the same goal.¹⁰⁵

Neither of these forces alone would be sufficient to achieve this goal. Morality alone is too weak to produce a league of nations and just states. Human beings, Kant thinks, are too corrupt.¹⁰⁶ At the same time, conflict and war could never actually make us moral. They effectively drive us toward peace, a league of nations, and legality, which is to say that self-interest drives us toward these things, but self-interest cannot be moral for Kant. Put more provocatively, then, it is evil that drives us toward morality.

It is important to be very clear here that Kant is not a consequentialist or a utilitarian. Evil that produces good consequences is still evil. Kant says,

Even if a constitution more in conformity with law were attained illegitimately, by the violence of a *revolution* engendered by a bad constitution, it could then not be held permissible to lead the people back to the old one, although during the revolution anyone who took part in it by violence or intrigue would be subject with right to the punishment of rebels.¹⁰⁷

If a higher good is brought about by evil means, we accept the higher good; indeed, we would be morally obliged to accept it. Nevertheless, the evil that produced it remains evil and must be treated as evil. Evil does not become good because it produces good consequences.

I have argued at length elsewhere that Machiavelli also holds this sort of view.¹⁰⁸ A common, but I think mistaken, way to interpret Machiavelli is as a utilitarian or a consequentialist in the moral realm. From such a perspective, it might seem that if something is necessary for the good of the state, it would be morally justified. Machiavelli, it is very definitely the case, holds that for the good of the state it is sometimes necessary to perform acts that are evil, and that they are therefore to be approved—I think we should say—*politically*. But it does not at all follow from this that they would be justified *morally*. Perhaps Machiavelli slips now and again, but generally speaking he understands the difference between good and evil with exceptional clarity and he does not pull his punches. He says clearly and explicitly that the prince “must learn to be able not to be good . . . ,”¹⁰⁹ and that the prince must “know how to enter into evil. . . .”¹¹⁰ Just because something is politically necessary does not change the fact that it is morally evil.¹¹¹

Perhaps Machiaveill's views are most dramatically expressed in a passage from the *Mandragola*, where Callimaco says, "the worst you can get from it is that you'll die and go to Hell. But how many others have died! And in Hell how many worthy men there are! Are you ashamed to go there?"¹¹² This implies that good and evil are absolutes. Evil is objectively, God-ordained, evil. There is no utilitarian or consequentialist sleight of hand possible here—evil cannot be transformed into good. Evil lands you in hell. Nevertheless, it is politically necessary to do evil. So you must accept that. You perform the evil, and then you must courageously endure the punishment. After all, as Machiavelli tells us, there are some very worthy people in hell.¹¹³ There is a lot of bravado here. It is even rather impressive. Nevertheless, it is clear that it does not get you out of hell. Evil is evil. And you pay the penalty in hell.

Moreover, this cannot easily be dismissed as something that might be attributed just to Callimaco and not to Machiavelli. Machiavelli's biographers inform us that he told the following story on his deathbed.¹¹⁴ I quote de Grazia's version:

He sees a long file of people, ragged, sick, weak, and weary. Asking who they are, he is told that they are the blessed of paradise whom one reads about in scripture: "Blessed are the poor for theirs is the kingdom of heaven." As they fade from sight he sees gathering a group of impressive persons in courtly attire, walking and gravely discussing matters of state. Among them he recognizes Plato, Plutarch, Livy, Tacitus, and other famous men of antiquity. These, he is told, are the damned of hell, because it is written: "The wisdom of this world is the enemy of God." As they stroll off, Niccolò hears himself being asked: "With whom would you rather go?" "Me?" he said, "I am not tagging along with those ragbags to go to paradise. I am staying with that other company, to talk about the state and go to hell."¹¹⁵

There is a widespread belief, especially among Straussians, that Machiavelli is an atheist. Not that it matters for my argument, but my suspicion would be that Machiavelli believes in hell. It is obvious that he is not very religious, but that is not enough to make him an atheist. As de Grazia rather elegantly puts it, "The most his enemies can say is that while he does not lack faith, there is not much to spare."¹¹⁶

Furthermore, as de Grazia points out, Machiavelli never questions the existence of the clergy, the papacy, or the church.¹¹⁷ Nor does he ever attack Christian dogma.¹¹⁸ Ridolfi and Villari tell us that on his deathbed he confessed his sins.¹¹⁹ It would seem that Machiavelli believes in hell. That means that he thinks that evil is evil and that it will send you to hell. Despite that, he thinks it necessary to do evil. But even if Machiavelli is an atheist, as the Straussians think, he still thinks evil—as necessary as it might be politically—remains evil. And so if we were to decide that the Straussians are right, then we would want to say that religion, for Machiavelli, functions as a metaphor to indicate that evil, despite being necessary, remains evil. Either way, it is clear that he completely lacks the utilitarian's ability to cheat and to transform evil into good. While Machiavelli is a consequentialist in the political sphere, in the moral sphere he is a rather strict deontologist and not a consequentialist at all.¹²⁰

What then does it mean to hold that something is morally evil but politically necessary? It means that a prince has to do it to achieve certain necessary ends. Political imperatives require it. Nevertheless, it cannot be morally justified. This definitely means that the prince should not make it a general principle. It should be avoided as much as possible. But sometimes it cannot be avoided. The prince must accept the need to do evil and, metaphorically or actually, that it will have to be paid for.

For Machiavelli, we live in a world that is basically evil, that is, a world in which good will be overpowered by evil—certainly if good confines itself to moral means. Nevertheless, good is still good, evil is still evil, and the former is to be sought and the latter avoided as much as is possible. To maximize the good in a basically evil world, we have no other recourse but to use a certain amount of evil. That, without any doubt, remains a fundamental contradiction, but it is the best that we can hope for.

Hegel discusses Machiavelli in several places and argues that he and Machiavelli share the same concern: the realization of a modern state out of a feudal morass. Moreover, Hegel agrees with Machiavelli that the actions necessary to realize a modern state are justified—in Hegel's view they are justified by world spirit. Moreover, Hegel agrees with Machiavelli that such actions are justified even if from the perspective of morality they are abominable. For both Hegel and Machiavelli, evil is necessary to produce a higher right. Hegel says of Machiavelli's *Prince*:

This book has often been thrown aside in disgust, as replete with the maxims of the most revolting tyranny; but nothing

worse can be urged against it than that the writer, having the profound consciousness of the necessity for the formation of a State, has here exhibited the principles on which alone states could be founded in the circumstances of the times. The chiefs who asserted an isolated independence, and the power they arrogated, must be entirely subdued; and though we cannot reconcile with our idea of Freedom, the means which he proposes as the only efficient ones, and regards as perfectly justifiable—inasmuch as they involve the most reckless violence, all kinds of deception, assassination, and so forth—we must nevertheless confess that the feudal nobility, whose power was to be subdued, were assailable in no other way. . . .¹²¹

In this passage it is clear that Hegel agrees that evil means are necessary to achieve a higher right. It is also clear that he thinks such means are not reconcilable with freedom—which is to say they are not reconcilable with morality. In earlier writings, Hegel also discussed Machiavelli, but there it was not perfectly clear that he thought such actions, for Machiavelli, were morally evil.¹²² In one of these earlier writings, Hegel even says that in *The Prince*, “in the constituting of the state, in general, what is called assassination, fraud, cruelty, etc., carries no sense of evil. . . .”¹²³

In later writings, however, it is clear that Hegel’s own view is that evil acts can produce a higher right, that the higher right is a higher right and thus justified, but nevertheless that we do not stop holding that immoral actions are immoral:

In the Roman people the injustice of continually interfering in everything was justified because it was the right of world spirit. Individuals who take the lead in such a people and at such a time, even if they act in an immoral fashion by despising the rights of others, are nonetheless responsible for its being executed [i.e., the right of world spirit]. Here the absolute idea of spirit has absolute right against everything else.¹²⁴

In another text, Hegel says that war is crime on behalf of the universal.¹²⁵ He also says that Caesar had the right to overturn the republic for the sake of world spirit, yet at the same time, “Brutus meted out justice, his right deserts, to Caesar. . . .”¹²⁶ In other words, Caesar’s

actions both produced a higher right and at the same time were justly punished as evil. Here Hegel even sounds like Kant, who in a passage quoted above in this section argued that if a revolution were to produce a better constitution, we would be morally obliged to accept that constitution, but that the revolutionaries would still rightly be subject to punishment.¹²⁷ Evil means can produce a higher right, but are still evil and should be treated as evil.

In another passage, Hegel is even clearer, "Those who, on ethical grounds . . . have resisted what the progress of the Idea of the spirit required, stand higher in moral worth than those whose crimes have been transformed by a higher order into the instruments of realizing its will."¹²⁸

Thus, I think it is Hegel's view that evil realizes a higher right, yet remains evil. We do not, like utilitarians, decide that evil gets transformed into good, just because it realizes a higher right.

Going further, Hegel even argues that morality has relatively little to do with realizing a higher right. In his view, virtue is much less effective in history than passion and self-interest:

[T]he extent to which their [humankind's] virtues are effective is relatively limited. But in many cases, passions, private interests, and the satisfaction of selfish impulses are the most potent force. What makes them powerful is [that] they do not heed any of the restraints which justice and morality seek to impose upon them. . . .¹²⁹

The same point is made, I have argued elsewhere, in the section of the *Phenomenology* entitled "Virtue and the Way of the World," which should be read as a commentary on Kant's philosophy of history.¹³⁰ In that section, Hegel describes "virtue" such that it is clear that he has Kant's ethics in mind. Virtue is the consciousness that law is essential and that particular interest must be rejected.¹³¹ On the other hand, the "way of the world" actively pursues self-interest and thus subordinates the universal to itself. For Kant, we saw, morality and the conflict of particular interests both lead toward the very same end. Likewise, for Hegel, the way of the world achieves the universal—the same universal that virtue wants to realize.¹³² For Kant, morality was supposed to guide the conflict of particular interest and help it toward its goal. So also, for Hegel, virtue attempts to aid the way of the world. But here Hegel begins to disagree with Kant. Hegel holds that really virtue's help is

not necessary; the way of the world is able to bring about the universal by itself.¹³³ Virtue thinks itself superior and thinks that it must realize the good through the sacrifice of particular interest. But it is particular interest that is able to realize the universal. As Hegel says in a famous passage from the Introduction to the *Philosophy of History*,

The particular interests of passion cannot . . . be separated from the realization of the universal; for the universal arises out of the particular and determinate and its negation. The particular has its own interests in world history; it is of a finite nature, and as such, it must perish. Particular interests contend with one another, and some are destroyed in the process. But it is from this very conflict and destruction of particular things that the universal emerges, and it remains unscathed itself. For it is not the universal Idea which enters into opposition, conflict, and danger; it keeps itself in the background, untouched and unharmed, and sends forth the particular interests of passion to fight and wear themselves out in its stead. It is what we may call the cunning of reason that it sets the passions to work in its service, so that the agents by which it gives itself existence must pay the penalty and suffer the loss.¹³⁴

It is Hegel's view, then, that what emerges in world history is reason, the universal, the highest right. And it is not his view that morality can be relied upon to produce this higher right. What produces it is the opposition of particular interests, and the dangerous conflict, even war, that results from this opposition. Moreover, there is no suggestion that in utilitarian fashion these interests are to be judged moral just because they give rise to the highest right. In many cases they are destroyed in the conflict—and fortunately so. In short, evil in conflict with evil produces the highest right, despite that fact that it is and remains evil.

And so I disagree with Avineri on these matters. He thinks Hegel rejects the conventional theory that "condemns war on general moral principles but ultimately finds justification for legitimizing some kind of military service." Avineri thinks that "a theory which would just dismiss the means as utterly unworthy while welcoming the results, would be both a very poor theory on theoretical grounds, and hypocritical, if not outright immoral, on ethical ones." And so Avineri thinks that

Hegel wants an understanding of “war which would transcend the mere moralism of condemnation.”¹³⁵ I think there is a scrupulous integrity in Machiavelli, Kant, and Hegel that Avineri misses. They realize that evil can bring about good. They accept and value the good. But they do not therefore give in to utilitarianism and count the evil as a good. Evil is evil, despite the fact that it can lead to good.

Wood takes a different tack. He argues that there is nothing new in the notion that evil can produce good. Mandeville, Adam Smith, and others held the view.¹³⁶ In my opinion, what is new and different about Hegel, Kant, and Machiavelli is not simply that evil produces good, but rather that in doing so the evil remains evil. Wood does not agree with this. He thinks that what makes Hegel’s view new (and scandalous) is that in doing evil great individuals have absolute right on their side, which is to say that the evil does not remain evil—it becomes absolutely right.¹³⁷ Moreover, Wood thinks that such absolute right is not to be understood as an “*ethical* advance,” not an advance to a “superior ethical order,” but a movement to something “higher than the ethical.” He thinks that what we have in “world history is a right that supersedes the ethical. It is, if you like, a right that is beyond the ethical, beyond good and evil.”¹³⁸ Consequently, Wood thinks that in judging world historical individuals Hegel holds that “there can be actions that morality (even ethics) has no right to judge.” Hegel even holds that such individuals “have an ‘absolute right’ or supramoral justification for their evil deeds. . . .”¹³⁹ But this simply does not fit with the passage quoted above where Hegel says that, “Those who, on ethical grounds . . . have resisted what the progress of the Idea of the spirit required, stand higher in moral worth than those whose crimes have been transformed by a higher order into the instruments of realizing its will.”¹⁴⁰ To say that these individuals stand higher in moral worth because they resist the progress of spirit on ethical grounds is to say that they stand higher in moral worth because they stand against evil. It is an evil that is necessary to realize a higher order, but it is still evil. Nor does Wood’s view fit with Hegel’s claim that “Brutus meted out justice, his right deserts, to Caesar as an individual.”¹⁴¹ This too suggests that Caesar’s actions, while necessary to realize a higher right, remain evil—and were justly treated as such. And so I do not think that Hegel holds, as Wood puts it, that there is “an absolute right to do wrong.”¹⁴²

Hegel, it is true, belittles the schoolmaster who—the very opposite of Wood—can see nothing but the evil in world historical figures, who

reduces them merely to their self-interest, and has no sense that a higher right was realized.¹⁴³ Hegel's point here, I suggest, is not that the schoolmaster is *completely* wrong, but rather that the schoolmaster lets go one side of the issue. Yes, the world historical figure acted immorally, but at the same time the world historical figure contributed to the realization of a higher right. We must hold together the higher right and the evil that realized it. We must not transform one into the other, either as the schoolmaster reduces the higher right to the self-interested evil of the world historical individual, or as the utilitarian does in deciding that the evil means necessary to produce the higher right must be seen as moral.¹⁴⁴

Nor do I think it the case that the higher right realized in history for Hegel is to be understood as something supramoral, beyond the ethical, or beyond good and evil. It is clear, as Hegel himself says, that when he speaks of right, he means "morality, ethics, and world history."¹⁴⁵ It is certainly the case that the higher right actualized in world history is higher than previously existing morality or ethics,¹⁴⁶ but at the same time it is clear that it is not *completely* outside, beyond, or other than they because morality, ethics, and world history—all three of them—are forms of *right*. And world history realizes a higher *right*. Nor is it the case, as Walsh puts it, that just because something "succeeded in getting itself accepted, it must have been right."¹⁴⁷ It is Hegel's view that world history realizes what really is right, a higher right, not something beyond right—if that is what "beyond the ethical, beyond good and evil" is supposed to mean.

Wood distinguishes between two standpoints that he thinks are found in Hegel, one amoral and one moral. The latter holds that (1) great men can from a moral standpoint be accused of moral evil, but that this standpoint has no significance from (2) the higher standpoint of world history which is amoral—or beyond good and evil.¹⁴⁸ I think Wood is mistaken. In the first place, I think that (2), the higher standpoint of world history, is not amoral—not beyond good and evil. It gives us a higher right, a higher good, a higher morality, and precisely in doing so is it justified. Indeed, Hegel says that "the content of the whole course of world-history" is the "genuine formation of ethical life [*sittlichen Lebens*]."¹⁴⁹ Moreover, I do not think that (1), the moral standpoint, lacks higher significance. The moral standpoint holds that great men can be accused of evil. This is not at all insignificant. Because it is evil that produces the higher right. That makes it quite significant. Furthermore, the evil that produces the higher right remains evil. It is not justified

by the higher right; it is not transformed into good. It remains evil. Yet it does so without being stripped of its significance—because it is what produces the higher right.

World history drives us toward the universal. It drives us toward greater and greater universality—it drives us toward the ethical, toward a higher and higher right. To take an example that Hegel uses in several places, we find in early history the principle of revenge.¹⁵⁰ If a member of my clan is harmed, I have an obligation to retaliate and kill the offender. The ethical prohibition against killing extends no further than the clan. I must not kill a clan member. There is no such prohibition against outsiders who harm the clan. Outsiders are not treated in the same way as clan members.

As history advances, the prohibition against killing may extend to a city, or a religious faith. In the modern world, Hegel thinks, the scope of any law will extend to a whole nation. For Kant the law should become international—regulated by a league of nations. Hegel resists that. At any rate, the scope of any law increases through history—it becomes more and more universal.

What makes this occur? Restricting laws to a limited range will inevitably produce conflict. If my clan takes its revenge, the other clan will be forced to take their revenge, which then forces our clan to take its revenge again. We soon end up with a feud cycle that will be hard to stop.¹⁵¹ As we have seen in Kant, it is such conflict that drives us toward the universal. Anything that is less than universal, anything we cannot universalize, anything that is not the same for all, will inevitably come into conflict with the interests of others and will drive us to expand the law, make it more universal, to evade the conflict. We will be pushed toward the universal, the rational, the right. That is the very core of the philosophy of history found in Kant and developed by Hegel.¹⁵²

How can we be sure at any point in history that we really are right—rather than that we just think we are right? We can be sure at least that we have a powerful force working to push us toward the right. If our principle is less than universal, then sooner or later conflict will emerge that will drive us further toward the universal. If we have declared, say, that “all men are equal,” if we have committed to this principle, if we really believe it, if it is given as part of our spirit, then what will happen (as in fact did happen) when African Americans begin to say: “what about us?” When they say that we too agree that all men *should be* equal—including us.¹⁵³ It may take a long time, but our spirit

will eventually force us to include African Americans in this equality. We cannot give up our principle of equality. We can dodge and make excuses, but eventually we will be forced on toward the universal. And then women, as they did, will begin saying that we too believe in the “equality of all men”—*including women*. And then other groups will follow. Once we commit to a principle (like equality) as a universal, once it is a part of our spirit, it will call forth all those we may never really have intended to include, it calls them to begin demanding inclusion. And in the long run (despite ugly reactions in the short run, despite diversions and backsliding), there is no way to avoid including them. The universal demands it, forces it. We might call this the cunning of the universal—which is not unlike the cunning of reason.¹⁵⁴ World history gives us “the highest right,”¹⁵⁵ for Hegel, because it is the greatest force pushing us toward the universal. It is Hegel’s view, I suspect, that without this force the *Moralität* and *Sittlichkeit* embedded in the institutions of our nation would stagnate.

To put this another way, any era in the development of world spirit, for Hegel, takes itself to be absolute. This means, at the very least, that it thinks all that it is able to think: it constructs its highest values, meaning, and purpose—and it takes these to be true. Truth, however, requires consistency. If things are not consistent, if there are contradictions, there will be conflict. Such conflict will produce a drive to eliminate the contradiction—it will produce a drive toward the universalizable. And it will continue to do so wherever contradictions arise. Hegel says,

When spirit progresses as itself and the institutions do not alter along with the evolving . . . spirit, true dissatisfaction arises, and if it is not addressed peace is interrupted: when the self-conscious concept contains institutions that are different from those in actuality, a revolution occurs.¹⁵⁶

In this way, a higher right (that is, a more universalizable, more inclusive, principle) emerges. It emerges for my reason and for reason as institutionalized in the courts, laws, procedures, policies, and so forth, of my nation. This higher right is not some sort of beyond good and evil, as Wood has it. This higher right will transform our ethical world and thus allow universal moral principles to function in an arena that will increasingly allow for the universality they demand. It will force us past slavery, the domination of women, the exclusion of gays, capital

punishment, and so forth. It will give us an ethical arena in which we can increasingly act on the universal moral principle that demands that we treat all people as equals.

At the same time, it is also Hegel's view that: "World history is . . . divine tragedy, where spirit rises up above pity, ethical life, and everything that in other spheres is sacred to it. . . ." ¹⁵⁷ He tells us:

One is sad to see the decline of great peoples. . . . But what has been laid low, *has* been laid low and *had* to be laid low. World spirit is unsparing and pitiless. Even the finest, highest principle of a people is, as the principle of a particular people, a restricted principle, left behind by the advancing spirit of the age. . . . ¹⁵⁸

And in another text, "If we consider the mass of individual happenings, history appears as an *altar* on which individuals and entire nations are immolated; we see all that is noblest and finest destroyed." ¹⁵⁹

Hegel is a tragic thinker. Such thinkers try to find a higher good within tragic pain, suffering, and collapse. Spirit is quintessentially tragic. The higher good only emerges out of the conflict, collapse, and destruction of lower, more limited principles. World spirit must destroy what previously counted as valid if it is to realize a new higher right. ¹⁶⁰ World history is, as another translation has it, "the slaughter-bench at which the happiness of peoples, the wisdom of states, and the virtue of individuals have been sacrificed. . . ." ¹⁶¹

What we have in tragedy, as well as in history, for Hegel, is a clash of rights, not a clash between right and wrong. After all, the triumph of right over wrong would hardly be tragic. Furthermore, as we have seen, Hegel does not think virtue is that powerful a force in history. History is a clash between rights, which leads to the destruction of those rights, out of which a higher right emerges. ¹⁶² As Hegel put it in a passage previously cited:

[T]here was no greater right than that Rome should be a republic; but for the sake of the spirit of the world, whose tool he was, Caesar had the right to overturn the republic, yet Brutus meted out justice, his right deserts, to Caesar as an individual. The single individual who sets himself up as the embodiment of the will of the world ends by being destroyed. ¹⁶³

As Hegel puts it in another text,

The original essence of tragedy consists . . . in the fact that . . . each of the opposed sides, if taken by itself, has *justification*; while each can establish the true and positive content of its own aim and character only by denying and infringing the equally justified power of the other. The consequence is that in its moral life, and because of it, each is nevertheless involved in *guilt*.¹⁶⁴

This conflict of rights can be found within a single community or between different communities. An example of the first, Hegel argues in the *Phenomenology*, would be the conflict between divine law and human law in the ancient *polis*, especially as depicted in Sophocles's *Antigone*.¹⁶⁵ An example of the second would be war between states, where two rights clash, both of them legitimate, with no accepted adjudication except war itself.¹⁶⁶ Such rights, we must realize, are deeply embedded in the customs, traditions, practices, commitments, institutions, and laws of a community—that is, in *Sittlichkeit*. When such rights clash and are destroyed, despite the fact that a higher right will emerge, it means the tragic destruction of a whole community, even a whole nation.¹⁶⁷ There is a serious price to be paid for the realization of the higher right. Its realization inevitably involves a great deal of suffering and destruction, that is, of evil.

The Absolute

But we have not yet said enough to account for the highest right, let alone its emergence out of evil. It is certainly not enough that we act merely in accordance with whatever the customs, traditions, and laws of our nation happen to be. Another way to put this would be to say that for the highest right to be actualized, it is not enough that it be recognized by other individuals, nor even by the state. It must be recognized by absolute spirit. Williams, we have seen, argues that for right to be fully actualized we must have mutual recognition between equals.¹⁶⁸ I have been claiming all along that this is not sufficient. It takes more than the recognition of my spouse to make our marriage real. I need more than the recognition I can get from other individuals in civil society. I need more even than the

recognition that I can get from an absolute monarch, especially one about to be overthrown in a revolution. I even need more than the recognition I can get from a modern rational state, especially one just barely able to tolerate same-sex marriage and unable to get past capital punishment. I need a state in which the highest right has been actualized, one that can win the recognition of absolute spirit. I need to know that the laws, institutions, and practices of my state live up to the highest right. Lacking that, Hegel thinks, I would not be free in the fullest sense.

Consider again our culture's concept of equality, which at the very least rules out unequal treatment before the law, slavery, serious discrimination, and so forth. How is the rightness of this conception grounded? Not empirically. If we think about it, people in many ways are quite unequal. Our commitment to equality, we might want to say, is the outcome of our history. That is certainly true, but can we say that it has no deeper ground than this, that with a slight change in our historical development we might not have been, or might not in the future be, committed to our conception of equality? Hegel argues that a commitment to equality first arises in Christianity's conception of the equality of each person before God. It then spreads and develops from there.¹⁶⁹ For Hegel, it is God or the absolute that grounds equality. Without the absolute, Hegel thinks, our commitment to equality could not amount to more than a contingent accident. Moreover, I think we *actually* do have a commitment to equality that is stronger and deeper than that, and thus it might not be so implausible to think that we *actually* do have a commitment to equality that is more profoundly rooted in our identity than can be made sense of without the presupposition of something like absolute spirit.¹⁷⁰

Hegel thinks:

The aim of spirit is . . . to make itself conscious of the absolute, and in such a way that this consciousness is given to it as the sole and exclusive truth, so that everything must be—and actually is—brought into conformity with it, and world history is ruled by it in reality as it was all along. To become actively aware of this means to do honour to God or to glorify the truth.¹⁷¹

We need to live in a society that we recognize as the highest and truest realization of right, such that the recognition we can get back from

it makes us really, truly: a citizen, a married couple, equal before the law, and so forth. We want to gain through this recognition an ontological status that is absolute, and we can only get that from an authority that we recognize as absolutely right. To live in a society that we cannot recognize as embodying the highest right means that we cannot get back from it a solid recognition of our ontological status, and thus that we cannot actually achieve that status.

What we need, for Hegel, is a fit, a reciprocal determining and mutual recognition between: (1) the subjectivity of the citizens, (2) rational, objective laws and institutions, and (3) absolute spirit. The citizen's behavior is not just subjective and whimsical—it is not even just subjectively rational. It accords with, it recognizes, and it is also molded and recognized by, objectively rational public institutions. Furthermore, the laws and institutions of society are not just the way our society happens to do things. They are absolutely rational—the actualization of absolute spirit. Absolute spirit is the outcome of the rational activity and recognition of individual citizens and their institutions, and these citizens and institutions are molded, recognized, made real, and judged as right by absolute spirit.

Hegel thinks that our laws,

carry enormous authority, the authority of millennia, of the entire human race. The whole of mankind has labored upon them, and it is not so easy to judge this work of spirit, or to be more clever than this world-spirit. It alone understands that work; to conform ourselves to it is the proper goal of our striving, not to undo the matter with glib reasoning.¹⁷²

While absolute spirit is our construction, the labor of the “whole of mankind,” nevertheless, as I argued above in chapter 1, it is not to be reduced to, or dismissed as, *simply* our construction. There is more depth to be found in this construction than we ever could have imagined ahead of time. Like a great work of art it contains a more profound and a higher truth than we can plausibly attribute to the conscious intentions of the artist.¹⁷³ It can contain a rational depth that needs to be unpacked and discovered. If we meet such reason in our world, in our laws, values, institutions, practices, in civil society as well as the state, if such reason is driven to greater and greater universality because anything less than the universal will provoke conflict that will drive us on toward

the universal, this reason is not something we can glibly dismiss. This reason is an authority. This reason is an ultimate authority. Moreover, such reason is not an alien authority. Such reason is our own reason. And the fact that it is so, far from lessening our obligation to it, makes our obligation to it even greater. If reason issued from some alien source, if it were imposed from outside, we might chafe under it and resist it even though it was reason.¹⁷⁴ But that is not possible if it is our own reason. A reason that is the labor of millennia, a reason that has been driven through conflict toward the universal, a reason that is our *own* reason, a reason we ourselves have actualized in our laws, institutions, practices, and character, a reason that gives us *Beisichselbstsein in einem Andern*, being with oneself in an other,¹⁷⁵ is a reason to which we have the highest obligation as our highest authority. To disobey it would be to contradict ourselves, and to do so in the deepest sense.

Conservatives and fundamentalists might instead insist that we need a right that stands outside and above our laws, institutions, and practices. They may think it necessary to bring in a God or an absolute that is other, outside, above, if we are to make our right absolute. But Hegel tries to show us that the absolute is not other, not outside, not beyond, not higher than reason. It is reason, reason at its highest, but this reason is our *own* reason. Hegel says, "Reason is only one and single. There is no second, superhuman reason. Reason is the divine element in man."¹⁷⁶

Hegel also says that the "state is the world which the spirit has created for itself. . . . We should . . . venerate the state as an earthy divinity. . . ."¹⁷⁷ He also says that "religion is the 'basis' of moral life and of the state. It has been the monstrous blunder of our times to try to look upon these inseparables as separable from one another. . . ."¹⁷⁸ When Hegel denies that church and state ought to be separate, the modern liberal is likely to hear that the church would dictate to the state. That would be a fundamental misunderstanding. Indeed, to suggest that the church should dictate to the state would *already* be to have separated church and state. For Hegel, the state does not get its direction from the church. The state does not need to seek spirit outside itself. Spirit does not develop in the church more than in the state.¹⁷⁹ It is not beyond or above the state. The state is the actualization of spirit; it is the "world which the spirit has created for itself. . . ." The state is the "march of God in the world, and its basis is the power of reason actualizing itself. . . ."¹⁸⁰ This is what it means to reject the separation of church and state for Hegel, and those who would find this the *most*

objectionable would be precisely those present day fundamentalists who want to reject the separation of church and state so that the church might dictate to the state. As we saw in chapter 1 above, to say that the state is the march of God in the world is to say that it is the march of spirit in the world, and that is to say that it is *our* march in the world. Religion is not a higher, external authority to which the state must answer. The state is the expression of spirit as much as is religion. And spirit is our spirit.

So also, for the state to separate itself from religion, as the liberal might prefer, would be like the state separating itself from art, or law, or politics. It would be like the state separating itself from itself. Spirit, for Hegel, is expressed in all of these areas. Our spirit is expressed in all of these areas and we are the result of that spirit.

The absolute is not distant and beyond. It is “wholly present, what we, as thinkers, always carry with us and employ, even though we have no express consciousness of it.”¹⁸¹ As we saw in chapter 1, Hegel’s God, or the absolute, is not an orthodox, transcendent deity that directs things from above and outside. The absolute is immanent, within the world, within our spirit.¹⁸² The absolute is constructed by a people as its highest and truest meaning, significance, and purpose. It gets embodied in their laws, institutions, practices, art, religion, philosophy, and so forth. “The province of the spirit is created by man himself; and whatever ideas we may form of the kingdom of God, it must always remain a spiritual kingdom which is realized in man and which man is expected to translate into actuality.”¹⁸³

If we have trouble accepting the concept of an absolute, we might imagine it as a continuous process of self-subversion. In any era of its development, the absolute is not fixed and final—certainly not for any subsequent era. For any given era, the absolute *is* absolute, all that era is capable of thinking—its conceptualization of its highest values, meaning, purpose, and truth. When an era can think beyond its absolute, when it can recognize something other or higher or outside, that begins the subversion of its absolute.¹⁸⁴ And as a culture transforms and constructs its reality, it will sooner or later discover that something that it had taken to be unimportant and inessential starts to become central and essential. If the absolute is unable to encompass and include this new reality, and given time it will not be able to do so, then the absolute can no longer claim to be *all* of reality, that is, it cannot claim to be *absolute*. At that point a new absolute would be needed. Hegel speaks

of “the tragedy which the absolute eternally plays out within itself—by eternally giving birth to itself into objectivity, thereby surrendering itself in this shape to suffering and death, and rising up to glory from its ashes.”¹⁸⁵ What we thought to be absolute, we have come to realize fell short of the absolute, but has now been resurrected as the absolute. The absolute, we could say, is absolute in that it is a force continually moving us toward the absolute. There is certainly no doctrine of an end of history here—to echo a point we discussed in chapter 1.

It is not the case that we ever have an absolute in the sense of having a fixed and final content. As far as content goes, the absolute’s realization might never be completed. The absolute certainly does not imply that a particular system or worldview has triumphed. By the absolute, we should understand a general concept, the idea of a unified totality of all truth as our *own*, a truth embedded in our institutions, practices, values, and goals. Moreover, we will be driven by this conception. If we find an exception, we will be obliged to accommodate it. As Burbidge puts it: “The only thing that is genuinely absolute, that is without any condition and any restriction, is not an entity identified by a noun but a living process in which each absolute realization of spirit is overturned in favour of another that is more truly absolute.”¹⁸⁶

The absolute is not a thing that comes into sight at the end of the *Philosophy of Right*. It has been with us the whole time; it is the interconnection of all the parts of the *Philosophy of Right* and the development of the whole *Philosophy of Right* appearing in the actual historical world. When we reach the end of the *Philosophy of Right*, we should not wonder where the absolute is. It is the *Philosophy of Right* itself come together as a totality:

[I]t is the absolute form into which all determinations, the whole fullness of the content posited by it, have returned. In this perspective, the absolute idea is to be compared with the old man who utters the same religious statements as the child, but for whom they carry the significance of his whole life.¹⁸⁷

Without this absolute we would not be able to ground our right—we could not envision a right that is right in the highest sense. If, as I have suggested as an example, we do have this sort of absolute commitment to equality, then we should expect to continually discover groups that we have failed to treat as full equals, we should expect to find new

exclusions, new and different forms of marginalization, and we will be continually pushed to begin to include them in our equality. That, it seems to me, pretty accurately describes our past history in the United States, and, if such an absolute really does exist for us, that should describe our future.¹⁸⁸ We can only wait and see. We certainly should not expect an end of history.

Conclusion

Hegel tells us that “spirit must create for itself a . . . world to conform with its own nature, so that the subject may discover its own concept of the spirit . . . in this objective reality. . . .”¹⁸⁹ Moreover, Hegel has told us, as we saw above in chapter 1, that

ours is a birth-time and a period of transition to a new era. . . . Spirit in its formation matures slowly and quietly into its new shape. . . . But this new world is no more a complete actuality than is a new-born child; it is essential to bear this in mind.¹⁹⁰

In another text, Hegel tells us that it is philosophical knowledge that “produces a new form in the development of spirit.” He tells us that this philosophical knowledge “is the actuality of spirit,” and, indeed, that “philosophy is the thinking of this spirit. . . .”¹⁹¹

Moreover, we also saw above in chapter 1 that Hegel says,

We find ourselves in an important epoch in world history, in a ferment, when spirit has taken a leap forward, where it has sloughed off its old form and is acquiring a new one. . . . The chief task of philosophy is to welcome it and grant it recognition. . . .¹⁹²

We have seen over and over again that recognition is what makes things real. Moreover, we have seen that there are higher and lower forms of such recognition. The recognition that I can get from a modern rational state is higher and more significant than what I could get from an absolute monarch, let alone what I could get from the regent of an unimportant backwater. And while the recognition that can be gotten

from religious, artistic, political, legal, and cultural institutions is very important, it should be clear that for Hegel the highest form of recognition is going to be that conferred by philosophy.¹⁹³ Indeed, Hegel holds, we have just seen, that it is philosophy's job to recognize the latest and highest development of spirit—and thus to make it real.

Moreover, in general, Hegel says that the "disposition and activity of our and every age is to apprehend the science that exists, to make it our own, and just in that process, to develop it *further* and to raise it to a *higher* level."¹⁹⁴ Thus, in the *Philosophy of Right*, he says, "This treatise . . . in so far as it deals with political science, shall be nothing other than an attempt to *comprehend and portray the state as an inherently rational entity*." He says that: "To comprehend *what is* is the task of philosophy. . . ." He says that: "What lies between reason as self-conscious spirit and reason as present actuality," that is, what lies between spirit and its actualization, "what separates the former from the latter and prevents it from finding satisfaction in it, is the fetter of some abstraction or other. . . ." It is philosophy, then, that must undo this fetter and "recognize reason as the rose in the cross of the present. . . ."¹⁹⁵ In another text, Hegel says that philosophy "transfigures reality with all its apparent injustices and reconciles it with the rational. . . ."¹⁹⁶ In other words, it is philosophy, the *Philosophy of Right* itself, that will actualize the latest and highest level of spirit. After all, in the first paragraph of the Introduction to the *Philosophy of Right*, Hegel tells us that the "subject-matter of the *philosophical science of right*" is "the concept of right" and also "its *actualization*."¹⁹⁷

In the Preface to the *Philosophy of Right*, Hegel compares himself to Plato. In Plato he finds an example of philosophy actualizing the spirit of its age, though in Plato's case it was an actualization that backfired in that it actualized what Plato wanted to suppress. In Hegel's view, Plato wanted to defend the *Sittlichkeit* of his era from the emergence of *Moralität* and the destructive influences of individualism that it involved. In doing so, Plato only furthered *Moralität*,

Plato's *Republic* . . . is essentially the embodiment of nothing other than the nature of Greek ethics [*Sittlichkeit*]; and Plato, aware that the ethics of his time were being penetrated by a deeper principle which, within this context, could appear immediately only as an as yet unsatisfied longing and hence only as a destructive force, was obliged, in order to counteract

it, to seek the help of that very longing itself. . . . But, he proved his greatness of spirit by the fact that the very principle on which the distinctive character of his Idea turns is the pivot on which the impending world revolution turned.¹⁹⁸

Hegel hopes to do exactly what Plato did. He wants his philosophy to actualize the spirit of his era, “the pivot on which the impending world revolution” will turn. My reading here is very different from that of Avineri, who thinks that “Hegel is not announcing the advent of a new world or preaching it, his very ability to comprehend his own world may already point to its possible demise.” After all, “the owl of Minerva,” in other words, philosophy, “begins its flight only with the onset of dusk,” that is, when “a shape of life has grown old. . . .”¹⁹⁹ Hegel may not be *preaching* the advent of a new era, but he is attempting to *recognize* it and thus to *actualize* it. Moreover, Hegel hopes to succeed just where Plato failed. In Hegel’s opinion, the *Moralität* launched by Plato has gone way too far in the modern world. Hegel intends to bring it back into balance with *Sittlichkeit* and thus, while he will not preserve ancient *Sittlichkeit* as Plato hoped to do, he will realize a higher *Sittlichkeit*, and thus do Plato one better.

The new principle that Plato recognized as dawning in ancient Greece was the principle that reason (not omens, not the gods, not custom and tradition) should regulate all human action. The *Republic* installs this as the fundamental principle of the state. This is *Moralität*, which takes off and eventually even replaces *Sittlichkeit*. It reaches its high point, Hegel thinks, in the French Revolution, *laissez-faire* economics, and Kantian ethics.²⁰⁰ For the French Revolution and for Kant, society is assessed by reason and where found wanting is criticized. Reason asks whether or not society is rational, moral, just, and sets out to reform it where it is not. The French Revolution goes even further. It wants to put reason completely in charge. It wants to remake society in accord with reason. It wants to destroy what is not rational and to engage in massive social engineering. In Hegel’s view this is *Moralität* gone way too far. *Moralität* as total control and radical social engineering, Hegel thinks, is terroristic.²⁰¹ It is moral. What it demands is rational and right. But it is also terror. It destroys existing customs, traditions, and practices.

Hegel is often thought to be a conservative. But he certainly does not want to keep things as they are, let alone return to the past. Spirit progresses for Hegel, and it is philosophy’s task to recognize this

progression and to make it real. On the other hand, for Hegel, we cannot guide this progress; we cannot engage in social engineering—at least not without terror. Reason does emerge and make progress, and for it to do so requires recognition. But there is a significant difference between recognizing what is emerging into one's practices, customs, and traditions, on the one hand, and trying to forcibly create such things, on the other. Hegel does not want to resist the emergence and progress of reason. He wants to recognize it and actualize it. It is political science, that is, philosophy, which will move us past feudalism and actualize reason in a modern state. We do not, for Hegel, need to repeat the political terror of the French Revolution.

Nor is this *laissez-faire* capitalism. Hegel thinks that within the spirit of the age, within the rational institutions that have emerged, it is necessary to work on the world, administer it, and control it. There is no terror in such *Sittlichkeit*. Control embedded in and in harmony with existing customs, traditions, and practices is fine. *Moralität* far in advance of and in opposition to them risks terror. In this respect, as we saw in chapter 5, Hegel anticipates European social democracy, which engages in social engineering within existing customs, traditions, and practices, that is, it does it democratically. It does not impose it from above or without.

Hegel is not a revolutionary, at least not in the sense that the term is most often used. He does not want a violent insurrection in Germany. But there is another and more basic sense of revolution, where revolution simply means fundamental social transformation, as, say, in the Industrial Revolution. Hegel is not opposed to social transformation. He certainly wants to get beyond feudalism and to transform Germany into a modern rational state. Conservatives could be said to reject or at least resist social transformation. Liberals tend to accept, even welcome, it. They tend to embrace it as progress—or they do so as long as that means modern, liberal, capitalist progress. But many liberals, at least in the United States, turn conservative, even hostilely conservative, as soon as social transformation is taken to mean moving beyond capitalism or even the mere limitation of its prerogatives. We do not find either of these forms of conservatism in Hegel. He welcomes the replacement of feudalism with a modern rational state and he is not at all unwilling to be critical of capitalism's weaknesses, nor opposed to putting limits on its excesses. It is equally true that Hegel is not a social democrat, but he anticipates them. At any rate, it is quite clear that Hegel is not a

conservative, certainly not a reactionary, and definitely not a totalitarian, as the blunders of Popper have led some to think. I also think that while Hegel cannot be called a social democrat, he is more progressive in many ways than are liberals.

There is another sense in which Hegel is not merely a liberal. It is not enough just to have a theory of the good society—it is not enough merely to have a theory that tells you what is right. Even Kant understood this—Marx certainly did. One must also be able to explain how right comes about in the world—not just the idea of right, not just the theory that allows us to identify the right. We must actually realize right in the existing world. Kant, we have seen, gives us a theory for how this occurs in his “Idea for a Universal History” and in *Perpetual Peace*. But even this is not enough for Hegel. Right is not so weak as to be merely something proposed for the future, something yet to be realized in the world. That is to fail to look deeply enough, to fail to see that right *has been* actualized. On the other hand, this is not to suggest that Hegel’s theory is conservative. He is not holding that the realization of right *has occurred* in the sense that it is *complete* and thus over and done with—as the end of history crowd would have it. There is *more* right to be realized—a great deal more. Hegelian theory, then, is neither a theory of right’s realization *merely* in some utopian future nor a theory that right’s realization has been completed. It is a theory that attempts to give us an understanding of right’s *continuous realization*—that is, a theory that allows us to understand how right *is being* realized right now. And if we can understand that, then we have a theory for how right *can* be realized—we have a theory for how to actualize the spirit of our own era, “the pivot on which the impending world revolution” turns.

Notes

Chapter 1

1. There are four translations of Hegel's *Philosophy of Right* (cited as PR) available in English. *Elements of the Philosophy of Right*, tr. H. B. Nisbet, ed. A. Wood (Cambridge: Cambridge University Press, 1991); *The Philosophy of Right*, tr. A. White (Newburyport, MA: Focus, 2002); *Hegel's Philosophy of Right*, tr. T. M. Knox (Oxford: Clarendon Press, 1952); and *Philosophy of Right*, tr. S. W. Dyde (Mineola, NY: Dover, 2005). I will usually use the Nisbet translation. When I cite from the other translations I will indicate the translator: e.g., PR (White). In citing the PR, I will where possible cite paragraph numbers, rather than page numbers, so that any edition, English or German, may be used: e.g., PR §127. To these numbered paragraphs, Hegel appended remarks. Depending on the translator, these appear after the main text in a different font or as indented; Dyde simply identifies them as Notes. These will be indicated as, e.g., PR §127R. Besides these remarks there are additions incorporated by E. Gans from the lecture notes of Hegel's students. These will be indicated as, e.g., PR §127A. And besides these additions, White, in his translation, adds supplements taken from now published versions of student transcriptions of Hegel's lectures. These I will indicate as, e.g., PR §127S. In citing Hegel's other texts, I will use abbreviations given in the list of Abbreviations on pages ix–x above.

2. See note 1 above.

3. For example, see K. R. Popper, *The Open Society and Its Enemies* (Princeton, NJ: Princeton University Press, 1966), II: 78.

4. PR §1.

5. PR §33A.

6. PR §1A, also §29.

7. PR §4.

8. LPWHI, 52, 56, 58, 82, 101, 112, 138.

9. ILHP, 44, 88, 110. PR (White) §274S.

10. LPWHI, 138.

11. For an earlier discussion of this matter, see my *Hegel and the Other: A Study of the Phenomenology of Spirit* (hereafter H&O) (Albany: State University of New York Press, 2005), 186–87. In general, the present chapter makes use of a good bit of material from this earlier book.

12. PM, 13.

13. *First Philosophy of Spirit*, in *System of Ethical Life and First Philosophy of Spirit*, tr. H. S. Harris and T. M. Knox (Albany: State University of New York Press, 1979), 209.

14. LPWHI, 63, 71.

15. LPWHI, 46, 77.

16. LPWHI, 52–53, 56.

17. PM, 298. See also A.W. Wood, *Hegel's Ethical Thought* (hereafter HET) (Cambridge: Cambridge University Press, 1990), 20.

18. LPWHI, 55.

19. ILHP, 88, 110.

20. PR §274.

21. PR §273R, §274A. Wood points out, however, that Hegel did in 1817 support a written constitution for Württemberg (PR, p. 462).

22. “Prefatory Lectures on the Philosophy of Law,” in MISC, 316.

23. See PM, 265–68. Also PR §273R. This democratic element in Hegel's thought might be better appreciated by comparing it to Kant who writes that laws must be given “in such a way that they *could* have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will. For this is the touchstone of any public law's conformity with right.” See “On the Common Saying: That May Be Correct in Theory, But It Is of No Use in Practice,” 8: 297. I have used the edition of this text found in *Immanuel Kant: Practical Philosophy* (hereafter KPP), tr. M. J. Gregor (Cambridge: Cambridge University Press, 1996), but, so that any edition, English or German, may be used, I cite the volume and page (given in the margins of most texts) of the standard edition of Kant's works, *Kant's gesammelte Schriften*, ed. Königlich Preussischen Akademie der Wissenschaften (Berlin: Georg Reimer, 1910–55). For Hegel, Kant's views would be inadequate. Laws must have *actually* arisen from the united will, that is, the spirit, of the people. Of course, the views of both Kant and Hegel are objectionable in that Kant does not, and Hegel does not adequately, require citizens to have actually voted. We will discuss Hegel's views on voting in chapter 6 below. Rousseau, of course, would require that all citizens had actually voted on any law; see J.-J. Rousseau, *Social Contract*, in *On the Social Contract*, tr. J. R. Masters (New York: St. Martin's, 1978), 59n, 79–80, 118.

24. PR §281R, §258R.

25. Popper, II: 78.

26. PR §258A.

27. LPWHI, 103; see also 58, 77. See also ILHP, 28, 110.
28. LPWHI, 44. PhS, 461. Also ILHP, 132.
29. For a fuller discussion of this matter, see my H&O, 135 ff.
30. See also W. H. Walsh, *Hegelian Ethics* (London: Macmillan, 1969), 46.
31. PM, 11.
32. *The Logic of Hegel*, tr. W. Wallace (Oxford: Oxford University Press, 1968), 88.
33. PM, 1.
34. E.g., LPS, 69. For an earlier discussion of this issue, see my H&O, 72.
35. PhS, 461. Hegel also says that “thought is the sole truth . . .” (LPWHI, 28).
36. LPWHI, 103. ILHP, 110, 124.
37. LPWHI, 150.
38. ILHP, 176. See also *Difference between Fichte’s and Schelling’s System of Philosophy*, tr. H. S. Harris and W. Cerf (Albany: State University of New York Press, 1977), 94.
39. For an earlier discussion of this matter, see my H&O, 2.
40. EL, 59.
41. PhS, 461.
42. *Difference between Fichte’s and Schelling’s System*, 94.
43. LPWHI, 44, see also 52–53.
44. PR, Preface, p. 21; since there are no sections in the Preface, I will always cite the page.
45. PhS, 6–7.
46. Quoted in G. Lukács, *The Young Hegel*, tr. R. Livingstone (Cambridge, MA: MIT Press, 1975), 454; see *Dokumente zu Hegel’s Entwicklung*, ed. J. Hoffmeister (Stuttgart-Bad Cannstat: Fromman Verlag, 1974), 352.
47. PR §1, §2.
48. ILHP, 10–11.
49. R. R. Williams, *Hegel’s Ethics of Recognition* (hereafter HER) (Berkeley: University of California Press, 1997), 2. For another valuable treatment of recognition, see S. Hoff, *The Laws of Spirit: A Hegelian Theory of Justice* (Albany: State University of New York Press, 2014), 175–201.
50. PhS, 111–19, esp. 116–17. This point emerges most clearly in Diderot’s *Rameau’s Nephew*, which influenced Hegel significantly; see D. Diderot, *Rameau’s Nephew*, tr. L. Tancock (Harmondsworth, UK: Penguin, 1966), 83, 121.
51. See for example, Williams, HER, 1 ff., 220.
52. L. Cortella, *The Ethics of Democracy: A Contemporary Reading of Hegel’s Philosophy of Right*, tr. G. Donis (Albany: State University of New York Press, 2015), 149.
53. PhS, 313 ff.
54. PM, 265–66.

55. We have a similar problem if we take mutual recognition to be occurring between individuals. We do not have individuals to start with as for a Locke or Hobbes. Individuals, for Hegel, are the product of a cultural or spiritual development. They are constructed as individuals by the recognition they get at a certain level of the development of culture (see H&O, 186 ff.). So again, mutual recognition between individuals would be dependent upon and derivative of a larger and more powerful spirit recognizing and constructing them as individuals.

56. LPS, 65. PM, 15.

57. LPWHI, 97.

58. Kant, *The Metaphysics of Morals* (hereafter MM), in KPP, 6: 223. I have used the edition of *The Metaphysics of Morals* found in KPP, and, so that any edition, English or German, may be used, I cite the volume and page (given in the margins of most texts) of the standard Akademie edition of Kant's works.

59. R. B. Pippin, *Hegel's Practical Philosophy* (Cambridge: Cambridge University Press, 2008), 117.

60. PR §7A, §23, §28. LPWHI, 47.

61. PH, 438–39 (brackets in the text). See also PR §4A, where Hegel says, “When I think of an object . . . I make it into a thought and deprive it of its sensuous quality; I make it into something which is essentially and immediately mine. For it is only when I think that I am with myself . . . it then no longer stands opposed to me, and I have deprived it of that quality of its own which it had for itself in opposition to me . . . so does spirit say: ‘This is spirit of my spirit, and its alien character has disappeared.’” Hegel also says, “Only in this freedom is the will completely *with itself* [*bei sich*], because it has reference to nothing but itself, so that every relationship of *dependence* on something *other* than itself is thereby eliminated” (PR §23).

62. PM, 11. Also see PR §4A.

63. LPS, 68 (brackets in the text).

64. PM, 1n.

65. PR §26A.

66. For a somewhat lengthier version of this matter, see my H&O, 138–39.

67. HET, 45. See also PR §23, §28. EL, 58.

68. See PR §30, §30R.

69. PR §7, §7R.

70. LPWHI, 97.

71. Kant, *Groundwork of the Metaphysics of Morals*, in KPP, 4: 394, 398, 400–01. I have used the edition of the *Groundwork of the Metaphysics of Morals* found in KPP, and, so that any edition, English or German, may be used, I cite the volume and page (given in the margins of most texts) of the standard Akademie edition of Kant's works.

72. PM, 239–40.

73. PR §33R.

74. Socrates, of course, lives in a society permeated by *Sittlichkeit*, and his own ethical thought is by no means free of it. Nevertheless, we find the clear beginnings of *Moralität* in his willingness to make individual philosophical rationality the ultimate authority in all matters. He is even willing to call all custom and tradition, even the mythical authority of the gods, before the court of philosophical reason and to criticize and reject whatever is found wanting.

75. PR (White) §144S. LPWHI, 97.

76. For an earlier and lengthier treatment of these matters, see H&O, 88 ff. Also see my *Marx and Modern Political Theory* (hereafter M&MPT) (Lanham, MD: Rowman & Littlefield, 1993), 128 ff.

77. PR §1A.

78. PR (White) §4.

79. "Prefatory Lectures on the Philosophy of Law," MISC, 309.

80. PR §3, §29, §30.

81. PR §138R. PhS, 119 ff. See also PR §212. Also "On the English Reform Bill," in PW, 238. Also see ILHP, 44. It is also possible for a state to have bad laws. See PR §180R. See also PR §212.

82. T. Aquinas, *Summa Theologiae* (New York: McGraw Hill, 1964), First Part of Second Part, Question 91, Articles 1–2.

83. Epicurus, "Principal Doctrines," in *The Epicurus Reader: Selected Writings and Testimonia*, tr. B. Inwood and L. P. Gerson (Indianapolis, IN: Hackett, 1994), 35 ff.

84. LPWHI, 89. See also EL, 284.

85. I have argued this at length in chapters 4 and 5 of my M&MPT. See also H&O, 106 ff.

86. LPWHI, 79.

87. LPWHI, 69.

88. PR §102, §102A.

89. PR §324A, §333R.

90. See chapters 4 and 5 of my M&MPT.

91. PR §138R. PhS, 119 ff.

92. A. Kojève, *Introduction to the Reading of Hegel*, tr. J. H. Nichols, Jr. (New York: Basic Books, 1969), 43–44, 47, 158–59n, 160–61n, 162–63; and see Bloom's Introduction to this text, x–xii. F. Fukuyama, "The End of History?," *The National Interest*, 16 (1989), 4–5. F. Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992). Also see T. Pinkard, *Hegel's Phenomenology: The Sociality of Reason* (Cambridge: Cambridge University Press, 1994), 331 ff. Taylor holds to a vaguer and more moderate version of this doctrine; see C. Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975), 426. Also see S. Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), 235–37. Also see H. Brod, *Hegel's Philosophy of Politics: Idealism,*

Identity, and Modernity (Boulder, CO: Westview Press, 1992), 158–61, 69–70. For a good counterargument, see P. T. Grier, “The End of History and the Return of History,” in *The Hegel Myths and Legends*, ed. J. Stewart (Evanston, IL: Northwestern University Press, 1996), 183–98. Also T. Brooks, *Hegel’s Political Philosophy: A Systematic Reading of the Philosophy of Right*, 2nd Edition (Edinburgh: Edinburgh University Press, 2013), 148–57. For an earlier and much briefer version of the material presented in this section, see my H&O, 196–98.

93. Bloom, x, also xi. Grier argues that “Kojève’s end-of-history thesis has no obvious grounding in Hegel’s texts, so the question must be asked: what led Kojève to this extraordinary view?” And Kojève tells us that it was an “article that his fellow Russian émigré Alexander Koyré wrote in the early 1930s . . .” (Grier, 186). For an excellent discussion of Kojève’s views, see Grier, 185–91.

94. Fukuyama, *End of History and the Last Man*, xii.

95. Fukuyama, “The End of History?,” 5.

96. Fukuyama, “The End of History?,” 4.

97. Fukuyama, “The End of History?,” 3.

98. Fukuyama, *End of History and the Last Man*, xii; “The End of History?,” 4. This claim is also made by Kojève, 159n.

99. See the *Preface to the Critique of Political Economy*, in *Marx Engels Collected Works* (hereafter MECW) (New York: International, 1975 ff.), XXIX: 264.

100. “Afterword to the Second German Edition” of *Capital* (MECW, XXXV: 20). What Engels has to say on this can be found in “Ludwig Feuerbach and the End of Classical German Philosophy,” MECW, XXVI: 360–61.

101. LPWHI, 54–55.

102. LPWHI, 66–67, 77–78.

103. PR, Preface, p. 23.

104. LPWHI, 197.

105. LPWHI, 41, 150, 58. PhS, 6–7.

106. PM, 281.

107. ILHP, 61.

108. *The German Constitution*, PW, 66.

109. LPWHI, 170–71; see also 215; also 84.

110. LPWHv1, 413.

111. HET, 13. See also, W.M. Simon, *The Failure of the Prussian Reform Movement 1807–1819* (Ithaca, NY: Cornell University Press, 1955), 205.

112. Avineri, 63–64. See also Simon, 6 ff.

113. PR §224, §224A, §227A, §228R, §277A, §291, §312. See Wood, Editor’s Introduction, PR, p. x.

114. Kojève, 44. Fukuyama, “End of History?,” 4–5.

115. Fukuyama, *End of History and the Last Man*, 144.

116. PR, Preface, p. 20.

117. PR, Preface, pp. 21–22.

118. PR, Preface, p. 20. See also PR §185R. In an earlier text, Hegel wrote, “Great revolutions . . . must have been preceded by a still and secret revolution in the spirit of the age”; see “The Positivity of the Christian Religion,” in *On Christianity: Early Theological Writings*, tr. T. M. Knox (Gloucester, MA: Peter Smith, 1970), 152.

119. See above, note 45 of this chapter.

120. See above, note 46 of this chapter. Wood argues that: “As an ethical order matures, its members become reflective, and this makes possible a positive comprehension of it (such as Hegel tries to provide for the modern state in the *Philosophy of Right*);” HET, 224. It is my view that the *Philosophy of Right* was not written *after* the ethical order of the modern state had matured, but as it was emerging, and that the task of the *Philosophy of Right* was to help realize this ethical order by recognizing it, not just comprehend it after it had come into existence.

121. EL, 29–30, 213, 215.

122. PR, Preface, p. 20.

123. PR, Preface, pp. 23, 22.

124. LPWHI, 66.

125. LPWHv1, 80.

126. Popper, II: 34 ff.

127. LPWHI, 184.

128. LPWHI, 184.

129. See also D. Rose, *Hegel's Philosophy of Right: A Reader's Guide* (London: Continuum, 2007), 141.

130. Grier, 192–93. See also Brooks, *Hegel's Political Philosophy*, 151–57.

131. Kant, CPR, A296–B354, A644–B675. I have used the Kemp Smith translation of Kant's *Critique of Pure Reason*, but again, so that any edition may be used, I cite page numbers (in the A and B editions) found in the standard Akademie edition of Kant's works (and given in the margins of most texts).

132. At PR (White) §333, Hegel says that international law “ought to be valid . . . between states,” but that this “does not go beyond an ought-to-be. . . .” It has not been actualized. See also LNRPS §162.

133. PR §1. Brod argues that the *Philosophy of Right* is historical in that it expresses its own time in thought; see Brod, 5–33 *passim*.

134. See, e.g., PR (White) §33S.

135. EL, 64.

136. PR §2.

137. For an earlier and lengthier discussion of the structure and method of the *Phenomenology*, which I make use of here, see my H&O, 1–20.

138. PhS, 3, 15–16, 50.

139. The *Philosophy of Right* also begins with an individual will, but not in the sense of a Hobbes or a Locke. As Peperzak argues, it is serious mistake

to take the early part of the *Philosophy of Right* as a treatise on free standing realities; see A. T. Peperzak, *Modern Freedom: Hegel's Legal, Moral, and Political Philosophy* (Dordrecht: Kluwer, 2001), 223–24. Hegel does not think that kind of individual will can exist. But at the start he leaves all of this aside—he abstracts from it. We start with a will that has been stripped of all that the fullness of spirit implies—an abstract will. And we will see that we must go beyond it if we are to explain freedom or right in the full sense. We will see that such an individual will assumes as its necessary presupposition what comes later in the *Philosophy of Right*—the whole, the concrete. Williams thinks this amounts to a methodological individualism; see HER, 112–13, 199.

140. SL, 48–49. CPR, B116–A85.

141. CPR, B126–A94, A97, A125, B161.

142. Others have held that Hegel's argument is similar to a Kantian transcendental deduction. See K. R. Westphal, *Hegel's Epistemological Realism: A Study of the Aim and Method of Hegel's Phenomenology of Spirit* (Dordrecht: Kluwer, 1989), 154–88. R. B. Pippin, *Hegel's Idealism: The Satisfactions of Self-Consciousness* (Cambridge: Cambridge University Press, 1989), 93, 102 ff., 132 ff. C. Taylor, "The Opening Arguments of the *Phenomenology*," in *Hegel: A Collection of Critical Essays*, ed. A. MacIntyre (Garden City, NY: Anchor, 1972), 151, 160. See also C. Taylor, *Hegel*, 95–96. J. Stewart, *The Unity of Hegel's Phenomenology of Spirit: A Systematic Interpretation* (Evanston, IL: Northwestern University Press, 2000), esp. 14–31. M. N. Forster attacks this view in *Hegel's Idea of a Phenomenology of Spirit* (Chicago: University of Chicago Press, 1998), 162, 163–64n. See also R. C. Solomon, *In The Spirit of Hegel: A Study of G. W. F. Hegel's Phenomenology of Spirit* (New York: Oxford University Press, 1983), 351–57.

143. PhS, 49–50.

144. Plato, *Republic*, 509d–516c.

145. It is also the case, I have argued elsewhere, that the *Phenomenology* does not develop historically either; see my H&O, 3, 98, 165, 192–96, 199, 225.

146. See PR §2. EL, 64. SL, 48–49.

147. PhS, 412–13.

148. PM, 241 ff. See also, Hegel's *Philosophy of Nature*, tr. A. V. Miller (Oxford: Clarendon Press, 1970), 3.

149. PR, Preface, p. 9. EL, 39.

150. See Translator's Introduction to PR (White), pp. ix–x.

151. Hegel does say that each stage reveals itself as "untrue" (PR §32A).

152. EL, 140. See also PR §32A.

153. See PR §33. See also A.B. Collins, "Hegel's Critical Appropriation of Kantian Morality," in *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right*, ed. R. R. Williams (Albany: State University of New York Press, 2001), 28–29.

154. EL, 304.

155. PR §31R. Hegel also says, “Only what is living and spiritual moves . . .” ILHP, 20. The dialectical movement from stage to stage is the result of spirit—which continually unfolds itself and develops.

156. PR §1 (my italics added).

157. PR §2.

Chapter 2

1. PR (White) §4.

2. PR §29R.

3. PR §273R, §274, §274A. “Prefatory Lectures on the Philosophy of Law,” in MISC, 316.

4. PR, p. xi.

5. HER, 2. Williams’s entire book gives an excellent treatment of the role of recognition in the *Philosophy of Right*.

6. PR §1, §2.

7. See the section entitled “Structure, Method, and Development” in chapter 1.

8. PR (White) §32R, §32A.

9. PR §75R, §75A, §100A.

10. PR §130, §100R. J. Locke, *Second Treatise*, in *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1996), §138, §139.

11. HET, 102. Also PR §75R, §100R. See also Peperzak, 221, 223.

12. HER, 112–13, 199. K.-H. Ilting, “The Structure of Hegel’s *Philosophy of Right*,” in *Hegel’s Political Philosophy: Problems and Perspectives*, ed. Z.A. Pelczynski (Cambridge: Cambridge University Press, 1971), 90–110.

13. PR §36; Hegel adds, “The commandment of right is therefore: *be a person and respect others as persons*.” See also LNRPS §13.

14. PR §35A.

15. PR §35R.

16. PR §34.

17. PR §39.

18. PR §40.

19. PR §41.

20. PR §44.

21. Locke §27, §28. HET, 95.

22. PR §44A.

23. PR §45R, see also §41A; but see §59A, §60.

24. PR §46.

25. PR §50, §51, §51A.

26. PR §62R, §46, §41. It is Hegel's view that to become an actual will and to be free, I must objectify myself, make myself an object to myself, in what I possess. And this requires private property, not common property (PR §46). Does this really require private property? Marx would not agree. Suppose I lived in a successful and developed Marxian community that followed the principle "to each according to need." If I were an artist, the community would make available to me the canvas, paint, and marble that I need. Why would I have to own them as private property? If what I need is to objectify myself, then a well-functioning Marxian community might be better than a capitalist market economy in which I could not afford to buy canvas, paint, or marble. Furthermore, if finished artworks were displayed according to their merit in the Marxian community, rather than in accord with the vagaries of a market economy, I may well be able to get more recognition of my objectifications in the former than the latter.

27. PR §46R.

28. PR §49R. Locke §50.

29. Locke §94, §138, §139, §221, §222. PR §100R. Also see Avineri, 85.

30. PR §229R, §230. It is also Hegel's view that "everyone ought to have property" (PR §49A).

31. PR §51, §51A.

32. PR §71, §71A; also see §72, §73.

33. PR §75R, §100R.

34. PR §81.

35. PR §95.

36. PR §94.

37. PR §82, §97.

38. PR §97A, §99.

39. I owe the idea that there are real difficulties in establishing a right to punish to a lecture given by Dick Wasserstrom in the early 1980s at the University of California–Santa Cruz. I have never been able to find him making the same point in print.

40. PR §99R. However, see below, notes 41 and 43 of this chapter. See also chapter 6, note 120 below.

41. K. Marx, "Capital Punishment," MECW, XI: 496. See also Kant, who seems to agree with this, MM, 6: 331. See also LNRPS §46. I agree with Marx and Hegel in rejecting utilitarian theories of the *justification* of punishment. This does not mean that it is never appropriate to consider consequences. I will do so below, but not as a justification for punishment.

42. PR §99A, §100R. LNRPS §46. See also H. Morris, "Persons and Punishment," in *Punishment*, ed. J. Feinberg and H. Gross (Belmont, CA: Dickenson, 1975), 76 ff. See also R. A. Duff, *Punishment, Communication, and Community* (Oxford: Oxford University Press, 2001), 13–19. In another text, Hegel writes,

“corporeal punishment is the most humiliating for the very reason that a human being so afflicted is supposed to be coerced with regard to his inner being. This presupposes the absolute connection between inner and outer aspects, for human beings know themselves as morally independent of this connection. Hence the humiliation is greater” (LPWHv1, 236). This, I think, could also be the case with San Quentin-style punishment.

43. Suppose that punishment does have consequences that we find useful, desirable, or beneficial. I doubt that is the case, but let us suppose that it does. That still would not give us a *right* to punish. In the nineteenth century, slavery certainly had utilitarian consequences—it may even have resulted in the greatest good for the greatest number. It was still wrong. I agree completely with Hegel that it was “unjust in and for itself” (see LPWHI, 184). See also “Prefatory Lectures on the Philosophy of Law,” in MISC, 320–21.

44. PR §99R.

45. PR §101A, §99R. LNRPS §46.

46. HER, 165.

47. LNRPS §48. See also PR §101A. In the *Philosophy of Mind*, Hegel says that an agent who sets up a law that is “recognized by him only—a universal which holds good *for him*, and under which he has at the same time subsumed himself by his action,” commits an “outrage on right.” The nullity of this act in the first instance is accomplished by revenge, but revenge is at the same time a new outrage. This is only overcome, Hegel thinks, in punishment; see PM, 247. We should notice, however, that someone who undergoes punishment may well view even punishment inflicted by the state as a new crime—and so may the criminal’s family. We may think that the criminal has no ground from which to complain when the criminal’s own principle is imposed upon the criminal, we may think that the criminal deserves the punishment, but if the criminal’s society contains any serious inequality, poverty, discrimination, or oppression, if the law comes down harder on one group than another, punishment may well not be viewed as deserved by the criminal and perhaps by the criminal’s family. This may lead to a continuing cycle of crime not entirely unlike the revenge cycles that were supposed to end with the institution of punishment carried out by the state. Moreover, Hegel is aware that revenge cycles are difficult to suppress and even that a residue lives on in several legal codes of his own time (PR §102A).

48. G. Chaucer, “The Pardoner’s Tale,” in *The Canterbury Tales*, tr. N. Coghill (Harmondsworth, UK: Penguin, 1982), 262–76. See also Williams, HER, 174–76.

49. PR §100; see also §100R, §100A, §101R. Also LNRPS §46. I have taken care to phrase my summary of Hegel’s argument so as not to suggest that it implies that the criminal *consciously intends* to set down or declare a universal principle, which is the way many, including Bennett, understand Hegel’s

argument, thus making it much easier to dismiss; see C. Bennett, *The Apology Ritual: A Philosophical Theory of Punishment* (Cambridge: Cambridge University Press, 2008), 42.

50. PM, 247. It cannot be, as some might want to argue, that the principle the criminal lays down is that killing is *wrong*. That is not the principle the killer acted upon; that is not the killer's will; that is not what is implied by the killer's action; that is not the law that the killer "has recognized for himself in his action" (PR §100). Thus, if we subsume the criminal under this law, the law that killing is wrong, we do not subsume the criminal under the *criminal's* own law—but rather under *our* law. It is true that our law would be the *right* law, but it is not true that it would be the *criminal's* own law. And thus it would be a law imposed upon the criminal from outside. Punishment, then, would not derive from the criminal's own principle—from the criminal's own deed. Crime would not contain within itself its own annihilation. Punishment would not simply be the manifestation of the crime. Punishment would be something imposed from outside. For a more detailed treatment of the sort of interpretation that I think is correct here, see W. Schild, "The Contemporary Relevance of Hegel's Concept of Punishment," in R. B. Pippin and O. Höffe, eds., *Hegel on Ethics and Politics*, tr. N. Walker (Cambridge: Cambridge University Press, 2004), 150–79. See also Rose, 71–73.

51. PR §101R.

52. Some commentators find it difficult to understand Hegel's view that crime is a nullity that must in turn be annulled. See PR (Knox) §99, also §82. Also Wood, HET, 109, 112. D. Knowles, "Hegel on the Justification of Punishment," in *Beyond Liberalism and Communitarianism*, 130. See also Tunick, *Hegel's Political Philosophy: Interpreting the Practice of Legal Punishment* (Princeton, NJ: Princeton University Press, 1992), ix–x. See Cooper, "Hegel's Theory of Punishment," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski, 159–67. There has been a good deal of argument in the literature concerning Hegel's concept of annulment; see Knowles, "Hegel on the Justification of Punishment," 131. But if the criminal acts on a *principle* that must be understood as universal, and if that principle is contrary to right, then that principle would imply a rejection, negation, or nullification of right. Such a false principle cannot be ignored, tolerated, or allowed to stand—it must be negated, cancelled, *aufgehoben*, that is, annulled, and must be publicly recognized as annulled. If not, it will be actualized as right.

53. PR §101A.

54. PR §82, §97.

55. See LNRPS §46. At PM, 247, Hegel refers to the law the criminal sets down as a "nominal law."

56. PR §100, §100R. Peperzak's position of these matters is very close to my own; see Peperzak, 289–90. Also Wood at least seems to hold a position like

mine; see HET, 122. See also D. Knowles, *Hegel and the Philosophy of Right* (London: Routledge, 2002), 150.

57. Hegel claims that, “wrong is turned into right. . . . Coercion in *abstracto* is wrong, but to the extent that it is coercion exercised against coercion, it is right; the negation of negation is affirmation” (LNRPS §46).

58. T. Brooks argues that Hegel is the first to develop a unified theory of punishment, that is, a single theory of punishment that brings together retributive, deterrent, and rehabilitative elements without substantial conflict; see T. Brooks, “Hegel and the Unified Theory of Punishment,” in *Hegel’s Philosophy of Right*, ed. T. Brooks (Chichester, West Sussex: Wiley-Blackwell, 2012), 103–23. Also T. Brooks, *Hegel’s Political Philosophy*, 39–51. Also see T. Brooks, *Punishment* (London: Routledge, 2012), 123–48. It is quite clear that in deciding how severe punishment should be, Hegel is not strictly retributive. He certainly rejects *lex talionis*, an eye for an eye, both in his treatment of punishment in the section on Abstract Right (PR §101R) as well as in his discussion of punishment later in the Civil Society section of the *Philosophy of Right* (PR §214R, §214A, §218, §218R, §218A). Nevertheless, Hegel’s argument for the justification of punishment is found in the Abstract Right section and it is a retributive argument. It argues that “*what the criminal has done should also happen to him*,” not in the sense that it embraces “an eye for an eye,” Hegel rejects that, but in the sense that it is the criminal’s own principle that we impose on the criminal (PR §100, §101, §101R, §100A). This is something Brooks tends to ignore. It is this element of Hegel’s theory of punishment that I want to focus on because I think it backfires and shows us especially clearly what is wrong with punishment.

59. PR §101R.

60. PR §101R, §214R, §214A, §218, §218R, §218A. MM, 6: 332–33. See also Schild, 166–67.

61. PR §100, §101, §101R, §100A. Also see above, note 58 of this chapter.

62. Compare my argument to that of Wood, HET, 116–17. The argument of Knowles is also very close to mine; see Knowles, “Hegel on the Justification of Punishment,” 125, 136. Also Knowles, *Hegel and the Philosophy of Right*, 150.

63. Very few philosophers even raise the question, which it seems to me is the crucial question, of whether we have a right to punish. Morris does raise the question in “Persons and Punishment,” 74. Nevertheless, what he goes on to discuss is the right to *be punished*, or the deserving of punishment, not the right to *punish*. So does R. W. Burgh, in his reconstruction and defense of Morris’s argument in “Do the Guilty Deserve Punishment?,” *The Journal of Philosophy*, 79 (1982): 193–210. In general, if one reads the philosophical literature on punishment while taking seriously the possibility that we have no right to punish, if one looks in this literature for arguments to the effect that we do have a right to punish, one finds that this right is assumed and not argued for in any extended or serious fashion. The Committee for the Study of Incarceration did

depart “from the usual ways of approaching incarceration. Unlike most of its predecessors, this Committee was prepared to address a first question: Ought we to have incarceration at all? . . . Committees have typically accepted the propriety of incarceration, and then gone on to recommend” various reforms; see A. Von Hirsch, *Doing Justice: The Choice of Punishments: Report of the Committee for the Study of Incarceration* (New York: Hill and Wang, 1976), xxii–xxiii. However this Committee did not call for the abolition of incarceration, “Prisons, at least, have confined the despotism of the state behind walls” (Von Hirsch, xxxv). Moreover, their justification of punishment, like that of Morris, finally rests largely on the argument that it is deserved (Von Hirsch, 45 ff.). And that is not to give us a right to punish. On the other hand, Beccaria argues that we have no right to impose capital punishment; see C. Beccaria, *On Crimes and Punishments*, tr. D. Young (Indianapolis, IN: Hackett, 1986), 48–49. M. J. Zimmerman, in *The Immorality of Punishment* (Buffalo, NY: Broadview Press, 2011) gives a largely utilitarian argument against punishment. For another argument against punishment, see K. Menninger, *The Crime of Punishment* (New York: Viking Press, 1969). Also D. Golash, *The Case against Punishment: Retribution, Crime Prevention, and the Law* (New York: New York University Press, 2005). Also D. Boonin, *The Problem of Punishment* (Cambridge: Cambridge University Press, 2008). R. E. Barnett argues for the replacement of punishment with restitution; “Restitution: A New Paradigm of Criminal Justice,” *Ethics*, 87 (1977): 279–301; see also Boonin, 215–75. A.Y. Davis argues for the abolition of prisons; see *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); and see below, note 79 of this chapter.

64. If we compare a crime resulting from a spontaneous outburst of anger, on the one hand, to a lengthy, systematic, planned prosecution resulting in ongoing, organized, institutionalized punishment, on the other hand, it is quite possible to decide that the latter would constitute the greater wrong. In a dissent, Justice White wrote, “in every case where punishment is inflicted for the commission of crime, if the suffering of the punishment by the wrongdoer be alone regarded the sense of compassion aroused would mislead and render the performance of judicial duty impossible” (*Weems v. United States*, in Feinberg & Gross, 35). It is not clear to me that it would be undesirable if the judicial duty to impose punishment were rendered impossible.

65. We must say the same thing in response to arguments based on victim’s rights, arguments to the effect that if we do not punish the criminal severely we are failing the victim, that we should not treat the criminal less severely than the criminal treated the victim. While it is the case that the criminal may deserve such punishment, we still have no right to inflict it. The same point holds against those like Wellman who would try to defend a rights forfeiture theory of punishment. Even if we concede that criminals do forfeit their right not to be punished, it still does not follow that we have a right to punish them;

see C. H. Wellman, “The Rights Forfeiture Theory of Punishment,” *Ethics*, 122 (2012): 371–93.

66. PM, 247 (my italics).

67. PR §218, §218A.

68. PR (Knox) §270, note p. 168 (brackets in the text). See also Williams, HER, 333.

69. *Hegel and the Human Spirit*, tr. L. Rauch (Detroit, MI: Wayne State University Press, 1983), 168 (brackets in the text).

70. J. Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford: Oxford University Press, 2003), 9–10, 97–150.

71. PR §94.

72. EL, 251.

73. Wood’s view on this is close to my own; see HET, 110–11. See also R. A. Duff and D. Garland, “Introduction: Thinking about Punishment,” in *A Reader on Punishment*, ed. R. A. Duff and D. Garland (Oxford: Oxford University Press, 1995), 6.

74. PR §100, §100R.

75. Many infractions, of course, would fall below a level that warranted exclusion—they might only warrant a fine or community service.

76. See Von Hirsch, 119–20.

77. A federal commission recently found that there are 60 thousand rapes every year in U.S. prisons, the majority by staff; see the report of the National Prison Rape Elimination Commission at: <http://www.nprec.us/>. See also the description of strip searches in women’s prisons by A. Y. Davis, *Are Prisons Obsolete?*, 62 ff.; for a discussion of sexual abuse in women’s prisons, see 78 ff.

78. Whitman, esp. 9–10. See also, J. Benko, “Big Home: The Strange and Radical Humaneness of Norway’s Halden Prison,” *The New York Times Magazine*, March 29 (2015), 44–51. It is even the case that a Norwegian court recently ruled that “Norway has violated the human rights of mass killer Anders Breivik by keeping him in solitary confinement. . . .” The judge said, “The prohibition of inhuman and degrading treatment represents a fundamental value in a democratic society. This applies no matter what—also in the treatment of terrorists and killers” (see <http://www.aljazeera.com/news/2016/04/norway-violated-anders-breivik-rights-court-rules-160421052819389.html>). Lippke attempts to give a philosophical grounding for the sort of confinement Whitman describes; see R. L. Lippke, *Rethinking Imprisonment* (Oxford: Oxford University Press, 2007), 3, 242. For a discussion of degradation, see Whitman, 20–32; for a discussion of harshness in U.S. prisons, see Whitman, 33–67. For a discussion of allowing prisoners to work for pay within prisons, see Lippke, 151–75. For a discussion of more permeable prisons involving more home leave, see Lippke, 175–95. For a discussion of civil rights that should be retained by prisoners, see Lippke, 196–222.

79. Angela Davis argues for the *abolition* of prisons. She argues that “jails, prisons, youth facilities, and immigration detention centers” in the United States, which presently contain “more than two million people,” should be replaced by means of a “constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscape of our society.” She argues that “[t]here are currently more people with mental and emotional disorders in jails and prisons than in mental institutions.” New mental health facilities (not, of course, the old sorts, which in some cases were as repressive as prisons) could be a vehicle for decarceration. So also the decriminalization of drug use and the expansion of high quality treatment programs could replace imprisonment for another *very* large part of the prison population. She also argues that sex work could be decriminalized, thus removing a large part of the population of women’s prisons. Undocumented immigration could also be decriminalized. And, in general, she argues that “[s]chools can . . . be seen as the most powerful alternative to jails and prisons.” In “impoverished communities” today, schools are, in fact, “major conduits to prisons.” They could be transformed into “places that encourage the joy of learning” and thus “into vehicles for decarceration.” Davis, *Are Prisons Obsolete?*, 105–10. Such strategies could radically reduce the number of people imprisoned and thus the number of people whose conditions would have to be transformed from imprisonment into exclusion. Davis also writes, “According to the Pew Report: ‘The United States incarcerates more people than any country in the world, including the far more populous nation of China. At the start of the new year, the American penal system held more than 2.3 million adults. China was second, with 1.5 million people behind bars, and Russia was a distant third with 890,000 inmates;’” see A. Y. Davis, *The Meaning of Freedom* (San Francisco: City Lights Books, 2012), 173.

80. PR §218A.

81. PR §82.

82. MM, 6: 333.

83. I certainly do not think that the need to posit crime as crime itself gives us, or implies, or necessitates a right to punish. Some commentators seem to assume that it does. See Cooper, 166–67. Also P. J. Steinberger, *Logic and Politics: Hegel’s Philosophy of Right* (New Haven, CT: Yale University Press, 1988), 126–47. This issue is also central to the disagreement between Houlgate and Wood. For Houlgate, a violation cannot be allowed to stand. It must be negated so that the validity of right is restored. And Houlgate’s assumption is that only punishment can do this; see S. Houlgate, “Hegel’s Ethical Thought,” *The Bulletin of the Hegel Society of Great Britain*, 25 (1992), 12. Also see PR §225. Wood’s position is much closer to my own. He holds that violations of right are unacceptable and that society must do something about them. It just does not follow from this that society is required to punish those violations. Wood’s view, like my own, is that Hegel does not give an adequate justification

of punishment; see A. W. Wood, “Reply,” *Bulletin of the Hegel Society of Great Britain*, 25 (1992), 44, 46. See also C. L. Ten, *Crime, Guilt, and Punishment: A Philosophical Introduction* (Oxford: Clarendon Press, 1987), 41. Williams argues in agreement with Houlgate and against Wood on this matter; see HER, 173–76. On the other hand, Tunick, in opposition to Cooper and Steinberger, does not think that in principle anything more than public denunciation is necessary; see Tunick, *Hegel’s Political Philosophy*, 134. Bennett agrees that the state must clearly and appropriately condemn crime and blame the criminal (that is, that the state must posit crime as crime). Bennett also agrees that this in itself does not establish a necessity to punish. But he does argue for punishment, though it is not clear to me that the apology ritual he tries to develop really is a form of *punishment*—certainly not in the way that I have tried to understand punishment. Bennett’s argument also differs significantly from (and would probably be at odds with) my argument for *excluding* the criminal. He thinks the criminal should be held to the demands of social relationships within which we are all embedded. See Bennett, esp. 175; also 33–34, 63–70, 102–03, 106, 108, 125, 162, 188.

84. “Nazi camp guard gets 5-year sentence in Germany,” *Los Angeles Times*, May 13, 2011, at <http://articles.latimes.com/2011/may/13/world/la-fg-demanjuk-conviction-20110513>.

85. See above, note 79 of this chapter.

86. PR §96A.

87. As Nietzsche suggests, this is not lost on the criminal. The criminal sees that the state acts much as the criminal does—and this hardens the criminal; *On the Genealogy of Morals*, tr. W. Kaufmann and R. J. Hollingdale (New York: Vintage, 1969), II, §14. I rarely agree with Nietzsche against Hegel, but here Nietzsche is right. After all, what criminals are subjected to in San Quentin is often worse than the crimes they are being punished for.

88. See Zimmerman, *The Immorality of Punishment*. K. Menninger, *The Crime of Punishment*. D. Golash, *The Case against Punishment*. D. Boonin, *The Problem of Punishment*. R. E. Barnett, “Restitution: A New Paradigm of Criminal Justice.”

89. “Prefatory Lectures on the Philosophy of Law,” in MISC, 316.

90. PR §102, §103.

Chapter 3

1. Z. A. Pelczynski, “Political community and individual freedom in Hegel’s philosophy of state,” in *The State and Civil Society: Studies in Hegel’s Political Philosophy*, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1984), 67. Also PR §106A.

2. PR §112A.

3. PR §108A.

4. HER, 178.
5. PR §106, §106A; also PR (White) §105S.
6. PR §107.
7. PR §107A.
8. PR §110A.
9. PR §114, §114A.
10. PR §131, §131A, §132, §132R.
11. PR §123, §123A, §124, §124R; also PR (White) §124S. Contrast this to Kant, *Critique of Practical Reason* (hereafter CPrR), 5: 93. I have used the edition found in KPP, but as usual cite the Akademie edition pagination.
12. PR §124R.
13. PR §106A.
14. PR §124R, §126R.
15. PR §124.
16. PR §118R.
17. PR §115, §115A.
18. PR §117A.
19. PR §129.
20. PR §133A.
21. PM, 251.
22. PR §131.
23. PR §94.
24. PR §129. See also, Kant, CPrR, 5: 122.
25. PR §132R.
26. PM, 251.
27. PM, 252.
28. PR (White) §131S.
29. PR §133, §133A, §134.
30. *Groundwork*, 4: 421. For an earlier discussion of Hegel's views on Kant's categorical imperative, see my H&O, chapter 3, sections VIII and IX.
31. *Groundwork*, 4: 404.
32. PR §135R.
33. H. Lottenbach and S. Tenenbaum too think that many of Hegel's critics misunderstand PR §135, but they go on to explain Hegel's conception of the categorical imperative without any reference to *Sittlichkeit* and simply by explaining Hegel's moral psychology, particularly his concept of a rational will; see "Hegel's Critique of Kant in the *Philosophy of Right*," *Kant-Studien*, 86 (1995): 211–30. A. B. Collins, too, adopts an approach that focuses on Hegel's concept of a rational will, but as informed by his *Science of Logic* as well as other parts of the *Philosophy of Right*, and she leads us toward an understanding of *Sittlichkeit*; see "Hegel's Critical Appropriation of Kantian Morality," in *Beyond Liberalism and Communitarianism*, 21–39.

34. M. G. Singer, *Generalization in Ethics* (New York: Knopf, 1961), 252. See also D. C. Hoy's argument against Singer, in "Hegel's Critique of Kantian Morality," *History of Philosophy Quarterly*, 6 (1989), 217 ff.

35. See also Steinberger, 149–50, who thinks that Hegel's argument against Kant implies that we could simply do away with promising and thus be free to break them with perfect consistency. That is not Hegel's position at all; his position is simply that Kant's moral theory fails to show us why promising is to be valued rather than done away with. It fails to establish our duties.

36. For an earlier discussion of Singer's views, which I use and revise here, see my H&O, 125–26.

37. PhS, 257–58. Theft, of course, is possible in a communist society, say, by taking more than one needs and selling it to the capitalist society across the border. The point of the fruit stand example is to show that we cannot tell what constitutes an act of theft without knowing what form of property is right, and the categorical imperative alone will not tell us what form of property is right.

38. See also my H&O, 125–26. Williams correctly understands Hegel on this matter. He sees that the categorical imperative cannot generate the content required for a substantial contradiction, but merely presupposes it. Such content only comes from the life-world and the mutual recognition found in an ethical community; see HER, 191. See also, Rose, 97–101.

39. Walsh, 23. See also C. Taylor, *Hegel*, 371, who makes a similar point.

40. *Groundwork*, 4: 404, 421.

41. Singer, 252. See also my H&O, 125–26. See also K. Westphal, "The basic context and structure of Hegel's *Philosophy of Right*," in *The Cambridge Companion to Hegel*, ed. F. C. Beiser (Cambridge: Cambridge University Press, 1993), 252–53.

42. PhS, 256. Also see my H&O, 125–26.

43. PR §135R. See J. McCumber, *Understanding Hegel's Mature Critique of Kant* (Stanford, CA: Stanford University Press, 2014), 164–67, who argues a view in certain ways similar to mine.

44. PR §135A.

45. See my H&O, 125–26.

46. PR §135R. Sedgwick, who defends Hegel, nevertheless seems to think, like Singer, that for Hegel the categorical imperative is empty or contentless; see S. Sedgwick, "Hegel on the Empty Formalism of Kant's Categorical Imperative," in *A Companion to Hegel*, ed. S. Houlgate and M. Bauer (Chichester, West Sussex: Wiley-Blackwell, 2011), 265–80. McCumber also holds this view, but he sees that *Sittlichkeit* is necessary to fill in this content (McCumber, 167–68).

47. See also my H&O, 125–26. S. B. Smith argues an interpretation similar to mine; see *Hegel's Critique of Liberalism: Rights in Context* (Chicago: University of Chicago Press, 1989), 74–75. Another accusation against Hegel is

that his emptiness charge assumes that Kant's "tests for usage of the categorical imperative are taken to exclude any reference to empirical matters. . . ." See K. Ameriks, *Kant and the Fate of Autonomy* (Cambridge: Cambridge University Press, 2000), 313. See also A. W. Wood, *Kant's Ethical Thought* (hereafter KET) (Cambridge: Cambridge University Press, 1999), 84. See also, K. Westphal, "The basic context and structure of Hegel's *Philosophy of Right*," 252. This is to misunderstand Hegel. Hegel's accusation is that Kant takes up empirical matters, takes up content, *uncritically*. The accusation is that Kant assumes the content rather than proves it. See also Lukács, *The Young Hegel*, 153.

48. PhS, 257. Hoy makes an argument similar to mine; see Hoy, 216 ff.

49. PR §135R.

50. "On the Scientific Ways of Treating Natural Law" (hereafter *Natural Law*), in PW, 124–25 (brackets in the text). See also, Kant CPrR, 5: 27. W. Kersting thinks that Hegel's emptiness charge fundamentally misunderstands the criterial character of the principles of Kant's practical philosophy; see "Politics, freedom, and order: Kant's political philosophy," in *The Cambridge Companion to Kant*, ed. P. Guyer (Cambridge: Cambridge University Press, 1992), 345–46. But the passage quoted from the *Natural Law* essay shows that Hegel understands this quite clearly.

51. *Natural Law*, PW, 125.

52. PR §135R.

53. C. M. Korsgaard, "Kant's Formula of Universal Law," *Pacific Philosophical Quarterly*, 66 (1985), 38–39, also 31.

54. My interpretation is similar to that of Sedgwick, 270–71.

55. I. Geiger, "What is the Use of the Universal Law Formula of the Categorical imperative?" (hereafter UULFCI), *British Journal for the History of Philosophy*, 18 (2010), 271–74, 278–79. *Groundwork*, 4: 421.

56. Geiger, UULFCI, 272, 280–86, 289. See also F. Freyenhagen, "Empty, Useless, and Dangerous? Recent Kantian Replies to the Empty Formalism Objection," (hereafter EU&D) *Bulletin of the Hegel Society of Great Britain (Hegel Bulletin)*, 32 (2011), 167 ff. Allison thinks the true principle of morality is latent or implicit in this pre-philosophical common moral knowledge, see H. E. Allison, *Kant's Groundwork for the Metaphysics of Morals: A Commentary* (Oxford: Oxford University Press, 2011), 7, 22, 29, 71. See also R. Stern, "On Hegel's Critique of Kantian Ethics: Beyond the Empty Formalism Objection," in *Hegel's Philosophy of Right*, ed. T. Brooks, 84–90.

57. See Freyenhagen, EU&D, 174–75.

58. Geiger, UULFCI, 285.

59. *Groundwork*, 4: 393; see also 4: 402–05. Also CPrR, 5: 155.

60. Geiger, UULFCI, 281. Also I. Geiger, *The Founding Act of Modern Ethical Life: Hegel's Critique of Kant's Moral and Political Philosophy*, (Stanford, CA: Stanford University Press, 2007), 1–4.

61. B. Herman, *The Practice of Moral Judgment* (Cambridge, MA: Harvard University Press, 1993), 77–93, 209–10.

62. I owe this insight to my colleague, Luis Cheng-Guajardo.

63. For a somewhat similar conclusion, see Freyenhagen, EU&D, 180.

64. See, e.g., *Groundwork*, 4: 408–09. Also MM, 6: 404, 407.

65. Herman, 147–51. This also seems to be Kant's view in the *Critique of Practical Reason*, see CPrR, 5: 62–65.

66. PhS, 262. See also my H&O, 127. Hoy argues that Hegel accepts Kant's moral philosophy (while recognizing its limitations) as a special case of a larger theory of social action; Hoy, 210–11.

67. The way Hegel expresses this is as follows: “for the determination of duty . . . Kant has contributed nothing but the form of identity. . . . To defend one's fatherland, to promote the happiness of another, is a duty, not because of the content, but because it is a duty. . . .” (*Hegel's Lectures on the History of Philosophy*, tr. E. S. Haldane and F. H. Simson [London: Routledge and Kegan Paul, 1968], III: 460). For Hegel, we should act for the *content*—to defend the fatherland or promote the happiness of another. We should act because we desire to defend the fatherland or promote the happiness of the other. That is a perfectly legitimate part of ethical behavior.

68. *Natural Law*, PW, 123–24.

69. KET, 82; see also 97.

70. KET, xiii.

71. *Groundwork*, 4: 421.

72. KET, 97–98, 107.

73. KET, 102.

74. KET, 84.

75. See above, note 47 of this chapter.

76. PR §135R.

77. PhS, 256.

78. HET, 158; see also KET, 90.

79. *Natural Law*, PW, 124–25.

80. See also, Freyenhagen, EU&D, 174, for a very good statement of this point. As Westphal correctly puts it, Hegel's argument is that Kant fails to see where the *fundamental* normative issues lie, that is, with questions like that of property, not with subsequent tests of our maxims; K. Westphal, “The basic context and structure of Hegel's *Philosophy of Right*,” 253.

81. See, e.g., Wood, HET, 157. Singer, 251–52. Korsgaard, 38–39. This point was also made by an anonymous reviewer of an earlier version of this material.

82. See, for example, Herman, 219, also 75 ff.

83. See, for example, *Groundwork*, 4: 422.

84. KET, 109, 165.

85. KET, 165.

86. MM, 6: 230.

87. MM, 6: 261–65, esp. 265.

88. M. Westphal, *Hegel, Freedom, and Modernity* (Albany: State University of New York Press, 1992), 62.

89. PR §135R. Also *Natural Law*, PW, 124. In my view Hegel's claim here is much more radical than Freyenhagen takes it to be; Freyenhagen, EU&D, 176–77. For another explanation of how to understand the claim that the categorical imperative can be used to “justify any wrong or immoral mode of action,” see Lottenbach and Tenenbaum, 223.

90. PR §100. Also LNRPS §46.

91. EL, 50.

92. PR §119, §119R. Hegel also says that to try to deny that the criminal's action is universal, to hold, say, that passion, intoxication, or some such thing takes away the criminal's guilt, is to deny the criminal the right and dignity of a human being (PR §132R; see also §119, §119R).

93. PR §138R.

94. LNRPS §62.

95. *Groundwork*, 4: 429.

96. PR §135R.

97. PR §135R.

98. *Groundwork*, 4: 436. P. Riley seems to be trying to argue this, “On Kant as the Most Adequate of the Social Contract Theorists,” *Political Theory*, 1 (1973), 463–64; see also, “Elements of Kant's Practical Philosophy: The *Groundwork* after 200 Years (1785–1985),” *Political Theory*, 14 (1986), 565–66.

99. *Groundwork*, 4: 436–37. Both Wood and Allison, however, deny that Kant identifies the “universal formula of the categorical imperative” with the Universal Law Formulation of the categorical imperative; see Allison, 251 ff; Wood, KET, 187–88. See Geiger, UULFCI, 285, who disagrees.

100. *Groundwork*, 4: 404.

101. Though, for what it is worth, Aristotle would not agree with this. He argues that the slave master acts in the best interest of the natural slave; *Politics*, Book I, chapters 5 and 6.

102. *Groundwork*, 4: 404.

103. Freyenhagen, EU&D, 172. See also Freyenhagen, “The Empty Formalism Objection Revisited: §135R and Recent Kantian Responses,” in *Hegel's Philosophy of Right*, ed. T. Brooks, 54–55.

104. KET, 150–51.

105. KET, 155.

106. *Groundwork*, 4: 404.

107. *Groundwork*, 4: 421.

108. R. Taylor, “Ancient Wisdom and Modern Folly,” in *Midwest Studies in Philosophy: Volume XIII: Ethical Theory: Character and Virtue*, eds. P. A. French, T. E. Uehling, Jr., H. K. Wettstein (Notre Dame, IN: University of Notre Dame Press, 1988), 56.

109. LPWHI, 184. However, see PM, 175 *Zusatz*.

110. *Groundwork*, 4: 429.

111. Aquinas, *Summa Theologiae*, First Part of Second Part, Question 91, Articles 1–2.

112. LPWHI, 52, 56, 58, 82, 101, 138.

113. ILHP, 44, 88, 110. PR (White) §274S.

114. PR §138A.

115. PR §62R. LPWHI, 184. However, see PM, 175.

116. See the section entitled “Right” in chapter 1.

117. For a fuller treatment of these matters, see my M&MPT, chapters 4–5.

118. See the section entitled “Freedom” in chapter 1.

119. PR §7, §7R.

120. PR §106, §106A, §107A, §110A.

121. PR §133A (brackets in the text).

122. PR §123. On the difference between well-being and happiness, see PM, 250.

123. PR (White) §124S.

124. PR §136A.

125. PR §137R.

126. PR §137R.

127. PR §137R.

128. PR §139, §139A.

129. PR §140R.

130. LNRPS §65.

131. PM, 254.

132. PR (Knox) §142.

Chapter 4

1. In the next few paragraphs I make use of and revise material from my earlier M&MPT, 129.

2. *Groundwork*, 4: 394.

3. *Groundwork*, 4: 399–400.

4. *Groundwork*, 4: 397–400.

5. MM, 6: 230.

6. PR §147, §153.
7. PR (Knox) §142. See also PR §145.
8. See, e.g., PR §41.
9. *Aesthetics: Lectures on Fine Art*, tr. T. M. Knox (Oxford: Clarendon Press, 1975), I: 31–32. See also H&O, 49. In the *Encyclopaedia Logic*, Hegel writes, “What human beings strive for in general is cognition of the world; we strive to appropriate it and to conquer it. To this end the reality of the world must be crushed as it were, i.e., it must be made ideal” (EL, 85).
10. See the section entitled “Freedom” in chapter 1.
11. PR §7, §7R, §35R.
12. PR §106, §106A, §107A, §110A.
13. PR §133A (brackets in the text).
14. Pippin, *Hegel’s Practical Philosophy*, 117.
15. PR §144. See also PR §132, §137.
16. See also H&O, 129.
17. See PhS, 224–25. Also PR §144A, §145, §146, §147.
18. LPWHI, 97. See also H&O, 128–29.
19. E.g., *Groundwork*, 4: 408–09. MM, 6: 404, 407.
20. PhS, 224–25. In the “Tübingen Essay” of 1793, Hegel thinks that folk religion is essential to the revival of *Sittlichkeit*. The qualities that this folk religion must have are: (1) that its teaching must be founded on universal reason, (2) that imagination, the heart, and the senses must not go away empty handed, and (3) that it must be so constituted that all of life’s needs, including public and official transactions, are bound up with it; “Tübingen Essay,” in *Three Essays, 1793–1795*, trans. P. Fuss and J. Dobbins (Notre Dame, IN: University of Notre Dame Press, 1984), 49.
21. “Positivity of the Christian Religion,” in *On Christianity: Early Theological Writings*, 154 (brackets and parentheses in the text).
22. PR §141R.
23. H&O, 128–29.
24. PR §135, §135R.
25. PR §148R.
26. LPWHI, 52, 56, 58, 82, 101, 112, 138.
27. ILHP, 44, 88, 110.
28. PR §138A.
29. This is the basis of Kant’s philosophy of history; see I. Kant, “Idea for a Universal History from a Cosmopolitan Point of View,” (hereafter IUH). I have used the L.W. Beck translation found in *On History* (Indianapolis, IN: Bobbs-Merrill, 1963), but, so that any edition, English or German, may be used, I cite the volume and page (given in the margins of most texts) of the standard Akademie edition of Kant’s works. For a fuller treatment of Kant’s philosophy of history, see my M&MPT, chapters 4 and 5.
30. LPWHv1, 80.

31. PR (Knox) §151 (parentheses in the text).
32. PR (White) §150R.
33. PR §151, §151R (brackets in the text).
34. PhS, 261. Also see H&O, 128–29.
35. PR §151R.
36. PR (Knox) §150.
37. PR (Dyde) §150.
38. PR (Dyde) §150R.
39. PR (Dyde) §151.
40. PR §174, §174R, §175R. See also LNRPS §85. Compare to Kant, MM, 6: 360.
41. See section entitled “The Categorical Imperative” in chapter 3.
42. PR §141, §141R, §141A.
43. A. Buchwalter, “Hegel’s Concept of Virtue,” *Political Theory*, 20 (1992), 551.
44. PR (White) §268.
45. A. MacIntyre, “The Nature of the Virtues,” in *Virtue Ethics*, ed. R. Crisp and M. Slote (Oxford: Oxford University Press, 1997), 132.
46. PR (White) §149.
47. Buchwalter, 553.
48. PR §158, §158A.
49. LNRPS §9. See also *First Philosophy of Spirit*, 231.
50. PR (Knox) §158. Westphal argues that in love and in patriotism (love of country), the other is not perceived as other. See M. Westphal, *Hegel, Freedom, and Modernity*, 51. We could say the same thing about solidarity and compassion.
51. PR §161.
52. *Groundwork*, 4: 399–400.
53. HER, 25. In the *Philosophy of Mind*, Hegel writes: “Universal self-consciousness is the affirmative awareness of self in an other self . . . each has ‘real’ universality in the shape of reciprocity, so far as each knows itself recognized in the other freeman, and is aware of this in so far as it recognizes the other and knows him to be free. . . . This universal reappearance of self-consciousness . . . is the form of consciousness which lies at the root of all true mental or spiritual life—in family, fatherland, state, and of all the virtues, love, friendship, valour, honour, fame” (PM, 176).
54. For Hegel, right includes both *Sittlichkeit* and *Moralität*; PR §33A.
55. HER, 117.
56. HER, 220.
57. HER, 220. See also Pippin, *Hegel’s Practical Philosophy*, 205–06. Also J. Russon, *Infinite Phenomenology: The Lessons of Hegel’s Science of Experience* (Evanston, IL: Northwestern University Press, 2016), 16–18.
58. “Love,” in *On Christianity: Early Theological Writings*, 304. Also “Two Fragments of 1797 on Love,” in *Clio*, 8 (1979), 261. There are also places

where Hegel speaks of “ethical equality,” LPWHv1, 318. Also see the passage translated in HER, 224.

59. PR §162A. However, see LNRPS §76. Also PR §162R.

60. LNRPS §80. See also the passage quoted in HER, 224.

61. PR §166, §166A (brackets in the text). See also LNRPS §77. Also LPS, 101–02. I have argued elsewhere that Hegel holds a more conservative view of women in the *Philosophy of Right* than in the *Phenomenology*; see H&O, 147–48.

62. PR (White) §166S.

63. For a lengthier discussion of this matter, see H&O, 148 ff.

64. PhS, 288.

65. See H&O, 149–50.

66. PR §158R.

67. This is the way the “Lordship and Bondage” section of the *Phenomenology* must be understood. It is a mistake to think the master could have gotten recognition from elsewhere, say, from other masters. In that early section of the *Phenomenology*, there are no other masters. There are no other people. They only emerge at a later and higher stage of the *Phenomenology*’s development. In fact, we do not even have persons in “Lordship and Bondage.” We have something like abstract Kantian self-consciousnesses (see H&O, chapter 2, section I). That recognition constitutes reality, see H&O, 40 ff.

68. In the lectures of 1818–19, Hegel does say, “The woman must come into her right just as much as the man. Where [there is] polygamy, [there is] slavery of women;” see PR, p. 440 (brackets in the text).

69. PR §164, §164A.

70. LPS, 194 (brackets in the text).

71. PhS, 305 ff. Also see H&O, 164 ff. Indeed, I have argued that it is Hegel’s view that we do not even have individuals without recognition from culture; see H&O, 164 ff., 186 ff.

72. PR §161A. LNRPS §79. See also, MM, 6: 277–78.

73. PR §161, §161A, §162, §162R. However, see LNRPS §76.

74. PR §163.

75. LNRPS §78.

76. PR §161, §161A, §162, §164, §164A.

77. PR (White) §167S.

78. LNRPS §78.

79. PR §168A. LNRPS §87.

80. For a more extended discussion of recognition constructing reality, see H&O, 40 ff. As pointed out above in note 71 of this chapter, I have argued elsewhere that Hegel’s view is that we do not even have individuals without recognition from culture; see H&O, 164 ff., 186 ff.

81. LNRPS §78.

82. K. Pillow, “Hegel and Homosexuality,” *Philosophy Today*, 46 (2002) SPEG Supplement, 77 ff., esp. 82–83. Fritzman discusses and complicates Pillow’s

argument against Hegel; J. M. Fritzman, “Queer Eye for the Geist Guy: Hegel’s Gay Science,” *International Studies in Philosophy*, 40 (2008): 49–63. Nicolacopoulos and Vassilacopoulos argue that Hegel’s logic, despite Hegel, would require him to accept homosexuality and same-sex marriage; T. Nicolacopoulos and G. Vassilacopoulos, *Hegel and the Logical Structure of Love: An Essay on Sexualities, Family and the Law* (Aldershot, UK: Ashgate, 1999), chapter 10.

83. J. Vernon, “Free-Love: A Hegelian Defense of Same-Sex Marriage Rights,” *The Southern Journal of Philosophy*, XLVII (2009): 69–89. Winfield also gives an argument based on freedom that is inspired by Hegel; R. D. Winfield, *The Just Family* (Albany: State University of New York Press, 1998), chapter IV, esp. 88–90. Knowles, in a brief line or two, does the same sort of thing; D. Knowles, *Hegel and the Philosophy of Right*, 251. See also F. Neuhaus, *Foundations of Hegel’s Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000), 277–78.

84. M. J. Monahan, “Recognition Beyond Struggle: On a Liberatory Account of Hegelian Recognition,” *Social Theory and Practice*, 32 (2006): 389–414. L. Miller, in “Master, Slaves, and the Queer Movement: Pseudo-Cooperation is De Facto Failure,” *Dialogue: Journal of Phi Sigma Tau*, 50 (2007): 17–21 would be an example of what Monahan argues against.

85. Nicolacopoulos and Vassilacopoulos do discuss Hegel’s concept of recognition and same-sex marriage, but in a very different way than I do, and they do not make recognition key to their argument for same-sex marriage; Nicolacopoulos and Vassilacopoulos, chapter 11.

86. E. R. Gill, *An Argument for Same-Sex Marriage: Religious Freedom, Sexual Freedom, and Public Expressions of Civic Equality* (Washington, DC: Georgetown University Press, 2012), 15. Also C. Card, “Against Marriage and Motherhood,” *Hypatia*, 11 (1996): 1–23.

87. PR §164A.

88. Pillow, 77 ff. Vernon, 69–89.

89. LNRPS §78.

90. E. J. Graff, “Retying the Knot,” in *Same-Sex marriage: Pro and Con*, ed. A. Sullivan (New York: Vintage, 1997), 137. Some think that domestic partnerships could lead to “separate but equal,” that is, to various forms of *inequality* between domestic partnerships and marriage. See especially R. D. Mohr, “Equality, Civil Unions, Gay Marriage: Some Thoughts on Heterosexual Supremacy,” *American Philosophical Association Newsletters*, 4 (2004): 4–5. Also A. Bolte, “Do Wedding Dresses Come in Lavender? The Prospects and Implications of Same-Sex Marriage,” *Social Theory and Practice*, 24 (1998), 127. Also G. V. Bradley, “What’s in a Name? A Philosophical Critique of ‘Civil Unions’ Predicated Upon a Sexual Relationship,” *Monist*, 91 (2008), 624.

91. See B. J. Sadler, “Re-Thinking Civil Unions and Same-Sex Marriage,” *Monist*, 91 (2008): 578–605. Also L. Keleher, “Civil Unions for All,” *Philosophy in the Contemporary World*, 20 (2013): 55–64. Also, J. R. Garrett, “Marriage

Unhitched from the State: A Defense,” *Public Affairs Quarterly*, 23 (2009): 161–80. See also A. F. March, “What Lies Beyond Same-Sex Marriage? Marriage, Reproductive Freedom and Future Persons in Liberal Public Justification,” *Journal of Applied Philosophy*, 27 (2010), 39–41, 54 ff. Also A. F. March, “Is there a Right to Polygamy? Marriage, Equality, and Subsidizing Families in Liberal Public Justification,” *Journal of Moral Philosophy*, 8 (2011), 246 ff., 253 ff. Also A. M. Dershowitz, “The Case for Civil Unions for All Couples,” *Free Inquiry*, 30 (2010): 22–23. Gilboa argues that same-sex marriage ceremonies ought to be tolerated and lawful, but same-sex marriages need not be recognized and need not be granted the same benefits and protections as different-sex marriages. For a Hegelian, and, I think, for many of those interested in same-sex marriage, this would be to lose what is most important—that is, recognition. Moreover, for a Hegelian, Gilboa’s argument would be incoherent. If same-sex marriage is lawful, then it has been recognized. If it has not been recognized, then it is not real marriage. See D. Gilboa, “Same-Sex Marriage in a Liberal Democracy: Between Rejection and Recognition,” *Public Affairs Quarterly*, 23 (2009): 245–60.

92. PR §161; see also §158.

93. Chapter 4 was originally written *before* the Supreme Court decision of June 26, 2015. Parts of it appeared as “Hegel, Recognition, and Same-Sex Marriage,” *Journal of Social Philosophy*, 46 (2015): 226–41.

94. It may seem that this concept of spirit overlooks the role of individuals who act against the status quo and bring about real advance—someone like Martin Luther King, Jr. But Hegel has no problem with such world historical individuals. What they do, in his opinion, is channel and translate into actuality the emerging spirit of their time (LPWHI, 52). Individuality and spirit are not incompatible. Emerging spirit expresses itself through individuality, otherwise individuality would have little effect on the world.

95. PR §168A. LNRPS §87.

96. PR §168.

97. See also Brooks, *Hegel’s Political Philosophy*, 73.

98. LNRPS §78.

99. For example, the Hana, in the science fiction novels of C. J. Cherryh.

100. J. Rauch, *Gay Marriage: Why It Is Good for Gays, Good For Straights, and Good for America* (New York: Henry Holt, 2004), 5, 86.

101. “House Debate on the Defense of Marriage Act,” in *Same-Sex Marriage: Pro and Con*, 225–26. Sadler argues that same-sex marriage would undermine gender difference and the normative ideal of marriage; Sadler, 585 ff.

102. See, e.g., R. H. Knight, “How Domestic Partnerships and ‘Gay Marriage’ Threaten the Family,” in *Same-Sex Marriage: The Moral and Legal Debate*, ed. R. M. Baird and S. E. Rosenbaum (Amherst, NY: Prometheus Books, 1997), 108.

103. W. N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996), esp. chapter 2.

Hegel also rejects the notion that the production of children is the sole, essential goal of marriage (PR [White] §167S), and thus he would lend no support to opponents of same-sex marriage in arguing that the production of children is the primary goal of marriage.

Chapter 5

1. PR §181A; see also §184A. See also PM, 256.
2. PR §238.
3. PR §181A.
4. Aristotle, *Politics*, Book 1, chapter 9.
5. For an earlier discussion of Hegel, Steuart, and Durkheim, see my M&MPT, 149 note 36.
6. Marx, *Economic and Philosophic Manuscripts of 1844*, MECW, III: 270–76. *German Ideology*, MECW, V: 48–49.
7. E. Durkheim, *Division of Labor in Society*, tr. G. Simpson (New York: Free Press, 1964), 130–31.
8. I think of myself as someone who tends to agree with Marx, not necessarily the broader Marxist tradition, especially where it differs from Marx.
9. PR (White), §144S, §185R. Also see the section entitled “Freedom” in chapter 1.
10. See, e.g., PR §5R and §5A. PhS, 355 ff.
11. PR §260.
12. PR §182 and §182A. A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A. S. Skinner (Indianapolis, IN: Liberty Fund, 1981), I: 456.
13. PR (White) §185R.
14. PR (White) §260; see also §187.
15. PR §184. LNRPS §132.
16. LNRPS §89.
17. See the section entitled “Transition from *Moralität* to *Sittlichkeit*” in chapter 4. Also PR §141 (also §141R and §141A).
18. PR §201A; see also §199, §185.
19. PR (White) §189; also §189R.
20. PR §189R.
21. See the section entitled “Transition from *Moralität* to *Sittlichkeit*” in chapter 4.
22. See the section entitled “Freedom” in chapter 1.
23. PR §7R.
24. PR §107, §110A.
25. PR §133A (brackets in the text).

26. PR, pp. xi–xii. See also PR §15 (also §15R and §15A). Also HET, 51.
27. PR (White) §260; see also §187.
28. PR §189R.
29. HER, 116.
30. See the section entitled “The Family and Love” in chapter 4.
31. D. Forbes, “Introduction,” to N. Waszek, *The Scottish Enlightenment and Hegel’s Account of ‘Civil Society’* (Dordrecht: Kluwer, 1988), xii.
32. Avineri, 147–48. This Marxist interpretation can also be found in G. Lukács, *The Young Hegel*, 330–32. See also Williams, HER, 242 ff.
33. HET, 248. See also M. O. Hardimon, *Hegel’s Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), 244–45. E. Gans, *Naturrecht und Universalrechtsgeschichte*, ed. M. Riedel (Stuttgart: Klett-Cotta, 1981), 92.
34. S. Houlgate is an exception, see *Freedom, Truth, and History: An Introduction to Hegel’s Philosophy* (London: Routledge, 1991), 114–19. Also see A. S. Walton, “Economy, utility and community in Hegel’s theory of civil society,” in *The State and Civil Society*, ed. Z. A. Pelczynski, 244–61, esp. 245.
35. PR §185.
36. PR §243, §244, §244A, §245 (brackets in the text).
37. PR (Knox) §242R.
38. LNRPS §107. See also PR, p. 452. For a discussion of private charity, see Hegel, *German Constitution*, PW, 22.
39. PR §253R.
40. PR §230 (brackets in the text).
41. PR §245.
42. PR §249 (first brackets in the text).
43. See the section entitled “Structure, Method, and Development” in chapter 1. See also S. Houlgate, “Hegel’s Ethical Thought,” 13–14.
44. PR §240A.
45. PR (White) §206S.
46. LNRPS §107.
47. LNRPS §120.
48. PR §244A.
49. PR, pp. xix, xxi. See also HET, 247.
50. Smith, *Wealth of Nations*, I: 456.
51. HER, 259. See also Houlgate, *Freedom, Truth, and History*, 111–12.
52. PR §238A.
53. PR §240A.
54. PR §230.
55. LNRPS §118.
56. PR (White) §249S.
57. PR §229A.

58. PR §236.

59. What Hegel calls the police, includes what we would call the departments of labor, of commerce, and of health. See Nisbet's Preface to PR, pp. xlii–xliii; also PR, p. 450.

60. PM, 263.

61. *System of Ethical Life*, 167–68.

62. Avineri, 101.

63. In the Introduction to the *Philosophy of History*, Hegel says, “a real state and a real government only arise when class distinctions are already present, when wealth and poverty are far advanced, and when a situation has arisen in which a large number of people can no longer satisfy their needs in the way to which they have been accustomed. But America has a long way to go before it experiences tensions of this kind; for the outlet of colonization is fully adequate and permanently open. . . . By this means, the principle source of discontent has been removed, and the continued existence of the present state of civil society is guaranteed” (LPWHI, 168–69). This passage certainly is claiming that the tendency to polarization and pauperization is a necessary tendency as a nation develops, and the claim that you only get a real state and a real government when this tendency is realized could be understood in the sense that only then do you have a real task, a real problem, which will necessitate a real state if it is to be handled. There is nothing in this passage, however, to suggest that for Hegel this points to collapse and failure. After all, a page later he calls America the “country of the future” (LPWHI, 170). Also, here, as in the *Philosophy of Right* (PR §246, §247, §247R, §248, §248A), Hegel holds that colonization allows the state to stave off pauperization.

64. Avineri emphasizes this; see Avineri, 101.

65. *Hegel and the Human Spirit*, 145.

66. LNRPS §107.

67. PR §244, §244A, §245, §245A.

68. PR §253R.

69. PR §255.

70. PR §252. See also Wood's Introduction to PR, pp. xix–xx.

71. PR §244, §244A, §245, §245A.

72. Houlgate thinks corporations do solve the problem. Wood rejects this view. See Houlgate, “Hegel's Ethical Thought,” 13–14. See also, S. Houlgate, *Freedom, Truth, and History*, 114–19. And Wood, “Reply,” 47.

73. PR (White) §254S.

74. PR (White) §207.

75. PR (Knox) §253.

76. PR (Dyde) §253R.

77. PR (White) §255A.

78. LNRPS §121.

79. PR §255R.

80. E. Bernstein, *Evolutionary Socialism: A Criticism and Affirmation* (New York: B. W. Huebsch, 1912), 139–40.

81. G. D. H. Cole, *Fabian Socialism* (London: George Allen & Unwin, 1943), 69.

82. HET, 242. Hardimon, 197. P. Lakeland, *The Politics of Salvation: The Hegelian Idea of the State* (Albany: State University of New York Press, 1984), 33.

83. B. Cullen, *Hegel's Social and Political Thought: An Introduction* (New York: St. Martin's Press, 1979), 94.

84. Wood, PR, p. xx. Wood, "Reply," 47.

85. For a good rebuttal of Cullen's view on this matter, see M. Prosch, "The *Korporation* in Hegel's Interpretation of Civil Society," in *Hegel, History, and Interpretation*, ed. S. Gallagher (Albany: State University of New York Press, 1997), esp. 200–02.

86. PR §252R.

87. PR §245.

88. Marx, *Communist Manifesto*, MECW, VI: 489–90.

89. On this matter, see also D. Knowles, *Hegel and the Philosophy of Right*, 291. See also, L. Herzog, "Two Ways of 'Taming' the Market: Why Hegel Needs the Police and the Corporations," in *Hegel and Capitalism*, ed. A. Buchwalter (Albany: State University of New York Press, 2015), 150.

90. LNRPS §107. See also PR, p. 452.

91. PR §311 and §311A.

92. PR, p. xx. See also the Editorial Introduction by O. Pöggler to LNRPS, p. 37.

93. PR §311A.

94. PR §314, §315, §315A.

95. PR §315.

96. PR §290A.

97. PR §290.

98. PR (White) §290A.

99. Durkheim, *Division of Labor in Society*, 131. Honneth seems to think Hegel's corporations anticipate Durkheim's occupational groups; A. Honneth, *The Pathologies of Individual Freedom: Hegel's Social Theory*, tr. L. Löb (Princeton, NJ: Princeton University Press, 2010), 76.

100. See A. W. Gouldner's Introduction to E. Durkheim, *Socialism*, tr. C. Sattler (New York: Collier, 1958), 18–21.

101. PR §230.

102. Aveneri, 147–48. James argues that Hegel's thought implies that the poor would have a right of rebellion and that Hegel would have to grant them this right (see D. James, *Hegel's Philosophy of Right: Subjectivity and Ethical Life* [London: Continuum, 2007], 125–37). My view, instead, is that for Hegel the

police and the corporations would have an obligation to prevent the development of conditions that would lead to revolution. Certainly it would be historically anachronistic to think that Hegel could believe in *proletarian* revolution. In 1821, Germany was an extremely backward place economically. It was not until 1848 that it even had a bourgeois revolution—and that failed. Germany certainly could not be called a capitalist society in 1821, and a proletariat barely existed. It is highly improbable that Hegel in 1821 could envision a proletarian revolution in Germany.

103. In the *Communist Manifesto*, Marx describes what he calls petty-bourgeois socialism. It “dissected with great acuteness the contradictions in the conditions of modern production. It laid bare the hypocritical apologies of economists. It proved, incontrovertibly, the disastrous effects of machinery and division of labour; the concentration of capital and land in a few hands; overproduction and crises; it pointed out the inevitable ruin of the petty bourgeois and peasant, the misery of the proletariat, the anarchy in production, the crying inequalities in the distribution of wealth. . . . In its positive aims, however, this form of Socialism aspires either to restoring the old means of production and of exchange, and with them the old property relations, and the old society, or to cramping the modern means of production and of exchange, within the framework of the old property relations that have been, and were bound to be, exploded by those means. In either case, it is both reactionary and Utopian.” I think one can see that Marx could consider that some of this might describe Hegel. We will also see that a social democrat would disagree with Marx. Marx concludes by saying that the last words of petty-bourgeois socialism are, “corporate guilds for manufacture, patriarchal relations in agriculture” (*Communist Manifesto*, MECW, VI: 509–10). J. Anderston is willing to claim that Hegel uses strategies like those of Keynesianism and state socialism. He even suggests that Hegel’s corporations resemble the German Social Democratic Party of the early 1900s; “Hegel’s Implicit View on How to Solve the Problem of Poverty: The Responsible Consumer and the Return of the Ethical to Civil Society,” in *Beyond Liberalism and Communitarianism*, 191, 194.

104. PR, Preface, p. 21. See also PR §214R.

105. Gans, 92.

106. See J. Spargo, *Social Democracy Explained: Theories and Tactics of Modern Socialism* (New York: Harper & Brothers, 1918), 64–65.

107. See, e.g., L. T. Sargent, *Contemporary Political Ideologies: A Comparative Analysis* (Belmont, CA: Wadsworth, 2003), 92.

108. T. Meyer with L. P. Hinchman, *The Theory of Social Democracy* (Cambridge: Polity Press, 2007), 112–13, 135. Meyer’s excellent book sets out a theory of social democracy in relation to Rawls, Dworkin, and others. At the same time it captures and explains social democracy as an actually existing phenomenon in western Europe and has sections on its historical development.

109. Meyer, 35. Meyer, sounding much like Hegel, says that there are three modes of political steering available to modern societies, “the state, the market, and civil society. The decision about which of these modes of steering ought to be selected for which politically determined goals, and whether one of them should be used exclusively or primarily, is a *meta-political* issue. Such decisions involve empirical judgments about the kinds of effects each instrument might have, the limits of its effects, and possible unintended consequences. But they also entail value judgments about the suitability of each instrument in light of its possible impact on the autonomy and responsibility of the citizenry. As a type of regulation, civil society is unique in its dependence on the availability of a steering resource, solidarity, which the state can neither generate nor replace, at least in the short run” (Meyer, 81).

110. See Sargent, 90–93. See also Durkheim, *Socialism*, 50–54.

111. Meyer, 16. Social democracy is very much concerned with economic rights, not just political rights. It is really rather astonishing how few people in the United States pay attention to the economic rights listed in Articles 22 through 29 of the UN “Universal Declaration of Human Rights,” see: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>.

112. PR (Dyde) §236, §236A.

113. PR (White) §233S.

114. Bernstein, 139–40. J. S. Mill writes, “most persons take a juster and more intelligent view of their own interest, and of the means of promoting it, than can either be prescribed to them by a general enactment of the legislature, or pointed out in a particular case by a public functionary” (*Principles of Political Economy* [New York: D. Appleton & Co, 1920], II: 577). Hegel would not agree with this, and it seems to me that Mill is just flat out wrong. Certainly, corporations, the police, and the state could be much more effective in *promoting* the individual’s interest than the individual alone, and they could even be more effective in understanding and explaining individuals’ interests, if they were at all complex; see, e.g., PR §236.

115. Meyer, 147.

116. LNRPS §107. See also PR, p. 452. Hegel also holds that justice demands that “everyone should have property,” though not that it be equal (PR §49A).

117. Avineri, 147–48.

118. As early as 1844, Marx discusses alienation in exchange in ways that anticipate his discussion of fetishism in chapter 1 of *Capital*; see “Comments on James Mill, *Éléments d’économie politique*,” in MECW, III: 224–28.

119. *Capital*, MECW, XXXV: 83–86. For a fuller and more detailed treatment of the issues discussed here in the section “Alienation,” see my “Estrangement and the Dictatorship of the Proletariat,” *Political Theory*, 7 (1979): 509–20. For an extended discussion of fetishism, see G. Lukács, *History and Class Consciousness: Studies in Marxists Dialectics*, tr. R. Livinstone (Cambridge, MA: MIT Press,

1971), 83–110. Lukács uses the terms fetishism, reification, and alienation (or externalization) more or less interchangeably; see *History and Class Consciousness*, xxiv–xxv, 84; see also *The Young Hegel*, 384–85, 538–41 (in this text alienation [*Entäusserung*] is usually translated as externalization; see p. v).

120. “Comments on James Mill,” MECW, III: 224–25.

121. *Capital*, MECW, XXXV: 87–89.

122. *Capital*, MECW, XXXV: 89–90. See also “Critique of the Gotha Programme,” in MECW, XXIV: 85–86.

123. “Critique of the Gotha Programme,” MECW, XXIV: 86.

124. *Communist Manifesto*, MECW, VI: 504–06.

125. Habermas too, though he gives us a far more complex and sophisticated treatment of the matter, agrees that liberal capitalism or social democracy can regulate the market and overcome fetishism or alienation; see J. Habermas, *Legitimation Crisis*, tr. T. McCarthy (Boston: Beacon Press, 1973), 20–22, 30–31. Also see J. Habermas, *The Theory of Communicative Action*, tr. T. McCarthy (Boston: Beacon Press, 1984, 1987), I: 357–58; and II: 96–97. However, it is not the case that Habermas recognizes that in Volume I of *Capital* Marx himself anticipates this model; see *Theory of Communicative Action*, II: 339–40, 343–44.

126. Of course, there would be other forms of alienation that would need to be dealt with; see my “Estrangement and the Dictatorship of the Proletariat,” 512 ff.

Chapter 6

1. PM, 272. See also PR §273R.

2. PR §281R.

3. PR §326R, §329.

4. PR §311.

5. PR §307. Also LNRPS §152.

6. PR §311, §311R. LNRPS §152.

7. LNRPS §153 (brackets in the text). See also “The Magistrates should be Elected by the People,” in PW, 5. However, Hegel would seem to be willing to allow women to vote; see PR (White) §311S. That this is Hegel’s view is usually not noticed and the very possibility is sometimes rejected; see, e.g., M. Levin and H. Williams, “Inherited Power and Popular Representation: a Tension in Hegel’s Political Theory,” *Political Studies*, XXXV (1987), 113. See also F. Beiser, *Hegel* (New York: Routledge, 2005), 257. Also S. C. Bosworth, *Hegel’s Political Philosophy: The Test Case of Constitutional Monarchy* (New York: Garland, 1991), 127.

8. PR §310R.

9. LNRPS §152.

10. LNRPS §153. What appears to be an inconsistency here can be resolved as follows. Those in a particular branch of industry form corporations to look after their interests, protect members against contingencies, and admit members in accordance with objective qualifications (PR §252). No one is excluded from a corporation—in the sense that both managers and laborers, wealthy and poor, are members. Those from different branches of industry, *however*, are not included in our corporation but form their own. On the other hand, there are no corporations for day-laborers and servants. For Hegel's views on voting and property qualifications in his earlier writings, see "Proceedings of the Estates Assembly in the Kingdom of Wurtemberg," in *Hegel's Political Writings*, tr. T. M. Knox (Oxford: Clarendon Press, 1964), 253. Also "On the English Reform Bill," in PW, 250, 257, 262. See also LNRPS §121.

11. PR §314, §315, §315A. LNRPS §148, §154.

12. PR §301R.

13. PR §301A, §302. LNRPS §147.

14. LNRPS §148. See also PR §272A.

15. PR §317A.

16. PR §319.

17. PR §317R, §318.

18. PR §318A.

19. Popper, II: 59, 62–63, 78.

20. PR §290, §290A.

21. PR §272A.

22. For an earlier discussion of these matters, see my M&MPT, chapter 1, esp. 25–26; also chapter 5, esp. 144.

23. PR §279R, §279A. See also LNRPS §138.

24. LNRPS §138. Also PR §279R, §279A.

25. To be more precise, Hegel thinks that feudal monarchy did have external sovereignty, but not internal sovereignty; PR §278R.

26. PR §278R; see also §273R, §277A. See also LPWHv1, 497.

27. PhS, 307.

28. *German Constitution*, PW, 13, 49.

29. *German Constitution*, PW, 13 (slight alteration of translation in brackets).

30. PR §278R. Hegel did seem to want this sort of monarch in the *German Constitution*, PW, 98, 100. Nevertheless, I do not agree that Hegel ends up with monarchical absolutism, as Z. A. Pelczynski thinks; "Hegel's Political Philosophy: Some Thoughts on its Contemporary Relevance," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski, 231. See also K.-H. Ilting, "Hegel's Concept of the State and Marx's Early Critique," in *The State and Civil Society*, ed. Z. A. Pelczynski, 100.

31. PR §279R. See also LPWHI, 119.

32. PR §276A, §270A.

33. PR (White) §269R.

34. PR §278R (brackets in the text).

35. PR §286R, §278R.

36. Those who reject idealism might scoff at the notion that something like a state can be understood as a web of concepts. A state, they might say, needs more than ideas; it needs an army and a police if it is actually to exert force. But the idealist would respond that these are nothing but organizations, that is, institutions made up of complex sets of ideas, for example, rules, procedures, methods, strategies, obligations, forms of answerability, technical know-how, science, and so forth. Lacking any of this you would not have an organization that could exert any force at all. Furthermore, what makes one army better than another is discipline, tactics, military theory, and so forth. At this point the anti-idealist might scoff even more loudly: what about canons, are they a complex web of ideas also? And the idealist would respond that without a web of ideas drawing together metallurgy, ballistics, military experience, and so forth, you would not have a real canon but a toy one.

37. PR §276.

38. PR §279, §279R.

39. PR §348.

40. LPWHI, 52. See also, PR §318A.

41. PR §280A. See also LNRPS §138. Also PH, 456.

42. PR (White) §281S. LNRPS §138. PH, 456.

43. For an earlier discussion of these matters, see my M&MPT, chapter 1, esp. 25; also chapter 5, esp. 144.

44. PR §260.

45. PR §279R. LNRPS §138.

46. PR, Preface, pp. 21–22.

47. Those who try to understand Hegel's arguments for monarchy sympathetically include Steinberger, 212 ff.; B. Yack, "The Rationality of Hegel's Concept of Monarchy," *American Political Science Review*, 74 (1980), pp. 709–20. M. Tunick, "Hegel's Justification of Hereditary Monarchy," *History of Political Thought*, XII (1991), 481–96. Also Levin and Williams, "Inherited Power and Popular Representation: a Tension in Hegel's Political Theory," 105–15. A. Brudner, "Constitutional Monarchy as the Divine Regime: Hegel's Theory of the Just State," *History of Political Thought*, II (1981): 119–40. Beiser, *Hegel*, 251–58. Also, Bosworth, *Hegel's Political Philosophy*.

48. LNRPS §143.

49. PR §280A. See also LNRPS §138. Also PH, 456.

50. PR (White) 281R.

51. PR, p. 465. See also PR (White) §286S.

52. "Proceedings of the Estates Assembly in the Kingdom of Wurtemberg," 270.

53. *German Constitution*, PW, 13.
54. PR §278R; see also §277A.
55. PR §281R. LNRPS §138.
56. LNRPS §140. PR §284.
57. PR §273, §287.
58. PR §284, §315A. LNRPS §139, §140.
59. PR §279A; also §283.
60. PR (White) §283S.
61. LNRPS §140.
62. LNRPS §140. PR (White) §283S. Wood argues that, following Stein's reforms, decisions were not to be made in the monarch's office but with and through the Council of Ministers that work directly with the monarch; PR, p. 467.
63. PR (White) §283S.
64. PR §329.
65. T. Brooks, *Hegel's Political Philosophy*, 113, see also 110–12. See also Bosworth, 122.
66. Brooks, *Hegel's Political Philosophy*, 106.
67. PR §280A. See also LNRPS §138. Also PH, 456.
68. PR §279A.
69. PR (White) §283S, §298S.
70. PhS, 307. See also *German Constitution*, PW, 12–13, 49.
71. PR §278R.
72. PR §279A.
73. PR §260; see also §187.
74. PR (White) §189 and §189R.
75. PR §301.
76. PR §314, §315. LNRPS §154.
77. PR §289. LNRPS §140.
78. LNRPS §140.
79. PR §272R, §272A, §301A.
80. PR §301R.
81. PR §297A.
82. PR (White) §291, §291S. LNRPS §144.
83. LNRPS §149, §140.
84. Tunick's view is quite different from mine. He thinks that, "Given alternatives of equal merit among which there can be no rational or objective basis for selection, and given that we must choose, then we need an arbitrary basis for selection." We need a monarch because we need someone to make this choice, and "We might say that *only* if it is made arbitrarily is the decision fair or just, and representative of the universal will of the state." It would not be so if it were made by any particular faction; see Tunick, "Hegel's Justification

of Hereditary Monarchy,” 493. It is as if we are back to oracles, entrails, and bird flight.

85. See, e.g., PR §257. For an earlier discussion of this issue that I follow here, see my M&MPT, 129.

86. See, e.g., PR §23, §28. EL, 58.

87. PR (White) §268A.

88. PR (Knox) §273R.

89. PR (White) §33, §33A.

90. PR §33.

91. PR (White) §30R. LPWHI, 124. LNRPS, p. 329.

92. PR §345.

93. LPWHI, 141. See also PR §337R.

94. Popper, II: 66.

95. LNRPS §164. See also PR §259A, §340.

96. PR (Dyde) §342.

97. PR (Knox) §273R.

98. PR §258A.

99. LPWHI, 212. I will use the term evil the way that Hegel uses it in many places (as also do Kant and Machiavelli), that is, simply to indicate an action that is seriously immoral or seriously destructive of persons and/or their institutions. Hegel has a great many other things to say about evil. He thinks that “the origin of evil is to be found in the mystery of freedom, i.e., its speculative aspect—in the necessity that freedom emerge from the will’s natural condition. . . .” It “marks the divide between irrational animals and human beings.” Human beings “are good only because they can also be evil. Good and evil are inseparable. . . .” Evil is something that is both necessary and that ought not to be. Indeed, Hegel thinks evil “is essential within the concept of spirit.” (See PR [White] §139R, §139A, §139S. See also PhS, 467–78). One might also compare Hegel’s view here to that of Kant in “Conjectures on the Beginning of Human History,” in *Kant Political Writings*, tr. H. B. Nisbet (Cambridge: Cambridge University Press, 1991), 221–34.

100. LPWHI, 42–43.

101. *Toward Perpetual Peace* (hereafter PP), 8: 366. I have used the edition of *Perpetual Peace* found in KPP, but, so that any edition, English or German, may be used, I cite the volume and page (given in the margins of most texts) of the standard Akademie edition of Kant’s works.

102. IUH, 8: 24–25. Also PP, 8: 366–67. Also, see my earlier and lengthier treatment of these matters in M&MPT, chapter 4.

103. IUH, 8: 20–21, 28. PP, 8: 360–62, 365, 368.

104. PP, 8: 356.

105. IUH, 8: 24–25. PP, 8: 365–67.

106. IUH, 8: 23.

107. PP, 8: 372–73.

108. See my “Niccolò Machiavelli—Adviser of Princes,” *Canadian Journal of Philosophy*, 25 (1995): 33–55.

109. *The Prince*, tr. H. C. Mansfield, Jr. (Chicago: University of Chicago Press, 1985), 61.

110. *Prince*, 70.

111. For others who agree with this interpretation of Machiavelli, see I. Berlin, “The Originality of Machiavelli,” in *Against the Current*, ed. H. Hardy (New York: Viking, 1980), 63, though Berlin fails to see, as I will argue, that Hegel holds a similar view. Meinecke, on the other hand, sees that Machiavelli, “retained the basic Christian views on the difference between good and evil. When he advocated evil actions, he never denied them the epithet evil or attempted any hypocritical concealment;” see F. Meinecke, *Machiavellism: The Doctrine of Raison d’Etat and Its Place in Modern History*, tr. D. Scott (New York: Praeger, 1965), 33. Moreover, at times Meinecke sees that Hegel holds a very similar view. For Hegel, “absolutely everything serves to promote the progressive self-realization of divine reason; and what is peculiarly subtle and cunning about it is that it forces into its service even what is elemental, indeed even what is actually evil” (Meinecke, 349; see also 33–34). But then Meinecke thinks that as Hegel’s thought developed Hegel came to reject this similarity. Hegel “went over to a monistic ethic” and came to hold that the contrast “was no longer one between moral and immoral, it was rather between a lower and a higher type of morality and duty; and the State’s duty to maintain itself was declared to be the supreme duty of the State, and ethical sanction was thereby given to its own selfish interest and advantage” (Meinecke, 357). I will argue that this is not Hegel’s view. For a good discussion of Machiavelli, Meinecke, and Hegel, see Beiser, *Hegel*, 214–18.

112. *Mandragola*, in *Machiavelli: The Chief Works and Others*, tr. A. Gilbert (Durham, NC: Duke University Press, 1965), Vol. II, Act 4, Scene 1, p. 805.

113. Concerning Machiavelli’s view of hell, see the fascinating book by S. de Grazia, *Machiavelli in Hell* (Princeton, NJ: Princeton University Press, 1989), chapters 13–14.

114. R. Ridolfi, *The Life of Niccolò Machiavelli*, tr. C. Grayson (Chicago: University of Chicago Press, 1963), 249–50. P. Villari, *Niccolò Machiavelli and His Times*, tr. L. Villari (London: Kegan Paul, Trench & Co., 1883), IV: 424. De Grazia, 341.

115. De Grazia, 341. On the origins of this story, see de Grazia 341–42. I suggest the story is a twist on Socrates’s argument in the *Apology* to the effect that the afterlife, if it exists, is not to be feared because it will allow him to continue conversing as he always has, but now with great men like Homer, Odysseus, and others; see the *Apology*, 40b–41c.

116. De Grazia, 4.

117. De Grazia, 115.

118. Villari, IV: 422.

119. Ridolfi, 250. Villari, IV: 421.

120. For a utilitarian, no action is right or wrong in itself, but is so only to the degree that it brings about utilitarian consequences—for Mill, happiness (J.S. Mill, *Utilitarianism*, 2nd Edition [Indianapolis, IN: Hackett, 2001], 7). While Mill is a rule utilitarian, not an act utilitarian, nevertheless, serious enough consequences can morally oblige us to override a rule (Mill, *Utilitarianism*, 23), and thus even to steal or kidnap (Mill, *Utilitarianism*, 63–64). Mill, of course, would not accept the notion that utilitarianism turns evil into good. Nothing is good or evil for him until we know how much happiness it produces. But if we are not utilitarians, if we are deontologists, if we hold that some actions simply are evil, and if at the same time we accept that they can lead to good, then we would hold that utilitarianism transforms these actions that we know to be evil into moral actions.

All actions have consequences. A moral theory must decide whether or not it is going to let consequences decide the morality of acts. If it refuses to do that, if it insists on deciding the morality of actions independently of consequences, it can, *after* it has decided the morality of the actions, notice that an action might have negative or harmful consequences. If the moral theory rejects consequentialism, it will still refuse to let such negative consequences change its moral assessment of the action, but it may well try to avoid these consequences in some other way. It might even seek to find a way to satisfy moral obligations without causing harmful consequences, while not giving in to consequentialism.

121. PH, 403.

122. *German Constitution*, PW, 80–81.

123. *Hegel and the Human Spirit*, 155.

124. LNRPS §164 (brackets in the text).

125. *Hegel and the Human Spirit*, 171.

126. LNRPS §8.

127. PP, 8: 372–73.

128. LPWHI, 141. Avineri even tells us that Hegel supported Napoleon, even welcomed Prussia's defeat at his hands, which paved the way for a modernized and liberalized Prussian state, despite the fact that Hegel's own house was burned down by the French during the battle of Jena and Hegel was left without employment because the university was closed; see Avineri, 63–64.

129. LPWHI, 68 (second brackets in the text).

130. See my H&O, 106 ff. See also M&MPT, 125–36.

131. PhS, 228–30.

132. PhS, 228–29, 235.

133. PhS, 230–32. See also PP, 8: 366.

134. LPWHI, 89.

135. Avineri, 195.

136. HET, 228.

137. HET, 228.

138. HET, 223.

139. HET, 230.

140. LPWHI, 141.

141. LNRPS §8.

142. HET, 235.

143. LPWHI, 87; see also 15. By this schoolmaster, Hegel may have in mind Kant, who dismisses, “mere heroes of romance who, while they pride themselves on their feeling for extravagant greatness, release themselves in return from the observance of common and everyday obligation, which then seems to them insignificant and petty” (CPrR, 5: 155). Hegel says, “‘No man is a hero to his valet de chambre’ . . . ‘not because the former is not a hero, but because the latter is a valet’” (LPWHI, 87–88).

144. Another way to put this is to say that spirit is the sum total of the consciousness, the vision, the practices, the institutions, the law, the politics, the philosophy, the religion, the art, and so forth of a people. It is their thinking, their will, and their freedom. It realizes and expresses their highest right. To say that spirit should be subordinated to morality, ethics, or law would be to say that the whole ought to be subordinated to a part of that whole—which makes little sense. And to say that spirit will develop to a higher point would be to say that spirit will violate existing morality or ethics, move past them, and realize a higher morality and ethics.

145. PR §33A.

146. PR (White) §33.

147. Walsh, 54.

148. HET, 229–30, 223.

149. PR (Knox) §273R.

150. PR §102, §102A, §349R. This was discussed above in the section entitled “Right” of chapter 1.

151. PR §102.

152. LPWHI, 82.

153. See, for example, *A Documentary History of the Negro People in the United States*, ed. H. Aptheker (New York: Citadel, 1968), I: 7.

154. See, e.g., EL, 240–41. Also LPWHI, 89.

155. PR (White) §33.

156. PR (White) §274S. Also see LNRPS §146.

157. LNRPS §164.

158. LNRPS §164.

159. LPWHI, 212.

160. LNRPS, p. 329. For a very different sort of discussion of Hegel as a tragic thinker, see G. Lukács, *The Young Hegel*, 398–420. Lukács treats the tragic element in Hegel as part of a discussion of Marx and the history of nineteenth-century capitalism. Modern tragedy is a characteristic of declining bourgeois culture that will be overcome in socialism—and in Lukács's opinion Hegel has at least a dim awareness of this (Lukács, *The Young Hegel*, 400–06). At the same time, Lukács says, dismissively, that Hegel treats tragedy, which is “a specific modern problem as if it were an eternal human conflict” (Lukács, *The Young Hegel*, 405). And indeed, Hegel does see tragedy as an eternal element (also see below, note 164 of this chapter).

161. *Reason in History*, tr. R. S. Hartman (Indianapolis, IN: Bobbs-Merrill, 1953), 27.

162. See *German Constitution*, PW, 70.

163. LNRPS §8.

164. *Aesthetics*, II: 1196. See also PhS, 448.

165. PhS, 266 ff.

166. See Avineri, 202.

167. LPWHI, 82. See also Lukács, *The Young Hegel*, 416–17. Fackenheim argues that after the radical evil of Auschwitz, Hegel's philosophy is untenable (E. L. Fackenheim, *The Religious Dimension in Hegel's Thought* [Boston: Beacon, 1967], 11–12). But Fackenheim seems to think that Hegel's thought takes itself to have achieved a reconciliation or redemption, rather than that his thought is and remains fundamentally tragic.

168. HER, 116.

169. E.g., LPWHI, 54–55, 114–15. EL, 240–41.

170. Here I follow and repeat material found in my H&O, 228.

171. LPWHI, 150.

172. “Prefatory Lectures on the Philosophy of Law,” in MISC, 316.

173. On the other hand, the state is not like a work of art, Hegel says, in that the state exists in the world, that is, in the sphere of contingency, arbitrariness, and error; PR §258A.

174. E.g., see PR §274A.

175. See, e.g., PR §23, §28. EL, 58.

176. ILHP, 91.

177. PR §272A.

178. PM, 284.

179. LPWHI, 108–09. PR §270R.

180. PR §272A, §258A.

181. EL, 59.

182. PhS, 461.

183. LPWHI 44, see also 52–53. See also ILHP, 91.

184. Hegel very clearly thinks that the absolute develops, but is “none the less absolute” (*Natural Law*, PW, 173–75).

185. *Natural Law*, PW, 151. Also PhS, 6–7. Here and in the following two paragraphs I follow and repeat material developed at much greater length in my H&O, 227–31.

186. J. Burbidge, “Hegel’s Absolutes,” *Owl of Minerva*, 29 (1997), 33–34.

187. EL, 304.

188. Hegel also says that, “the *universal spirit, the spirit of the world*, produces itself in its freedom from all limits, and it is this spirit which exercises its right—which is the highest right of all—over finite spirits in *world history* as the *world’s court of judgement*. . . .” (PR §340). It is quite clear that for Hegel world history’s realization of the highest right means that one nation exercises this right over other nations. Moreover, Hegel says that civilized nations are entitled to “treat as barbarians other nations which are less advanced than they are in the substantial moments of the state . . . in the consciousness that the rights of these other nations are not equal to theirs and that their independence is merely formal” (PR §351). Obviously, this could be used as justification for racism, ethnocentrism, and cultural imperialism. I have tried to deal with this issue at length elsewhere. I direct the reader there (H&O, chapter 5, sections IV–VI) and will not repeat it here. Here let me briefly take up a different side of this issue, one where Hegel’s position makes some sense. The historical development of world spirit shows us, for example, that slavery is an abomination. Under no conditions should we in dealing with another nation accommodate their acceptance, toleration, or support of such a practice. Indeed, we should, as it were, bring them before “the *world’s court of judgement*” and push them toward the abolition of slavery. And it also follows that those nations more advanced than we are, say, on capital punishment, should not accept or accommodate our practice of it. They should bring us before “the *world’s court of judgement*,” they should refuse to extradite prisoners to us; and they should push us toward the abolition of this abominable practice. In this way, then, world historical nations might exert a force to push us (or more of us) further toward the highest right.

189. LPWHI, 208.

190. PhS, 6–7. In a very early work, in discussing how Christianity supplanted paganism, Hegel tells us, “Great revolutions . . . must have been preceded by a still and secret revolution in the spirit of the age,” *The Positivity of the Christian Religion*, in *On Christianity: Early Theological Writings*, 152.

191. ILHP, 112–13.

192. Quoted in G. Lukács, *The Young Hegel*, 454; see *Dokumente zu Hegel’s Entwicklung*, 352.

193. See, e.g., PR §270A.

194. ILHP, 10–11 (my italics added).

- 195. PR, Preface, p. 22.
- 196. LPWHI, 67.
- 197. PR §1 (last italics added).
- 198. PR, Preface, p. 20. See also PR §185R.
- 199. Avineri, 129. PR, Preface, p. 23. Wood, HET, 224, seems to hold a view like Avineri's.
- 200. I have argued this at length in H&O, chapter 4.
- 201. See, e.g., PhS, 355 ff., 359–60. PR §5R, §5A, §258R.

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Index

- absolute, 3, 6–7, 15–16, 18–19, 23, 32–38, 90, 155, 161, 163–69, 218n184
- absolute knowledge, 33
- Abstract Right, 13, 35–36, 39–42, 52–56, 79, 85, 112–13, 187n58
- actual, 26–32, 37–39, 50, 53, 80, 141, 184n26
- actuality, 7, 23, 28–29, 38, 89, 97, 146, 161, 167, 169–70, 202
- actualization, 4, 8, 15, 22, 28–29, 37–39, 84–85, 89–90, 101–104, 112–13, 118, 146–50, 163–66, 170–73, 186n52
- African Americans, 160–61
- alienation, 11–12, 43–44, 85–86, 90, 92, 94, 104–107, 109, 112–15, 132–35, 148, 166, 178n61, 208n118, 209nn125–26. *See also* fetishism
- America. *See* United States
- ancient world. *See* Greeks
- Anerkennung*. *See* recognition
- annulment, 44, 52–53, 186n52
- anti-Semitism, 47
- antiquity. *See* Greeks
- Aquinas, T., 19, 78
- Aristotle, 77–78, 109, 196n101
- armed forces. *See* military
- Athens, 86. *See also* Greeks
- Aufhebung*, 42, 118, 186n52
- Augustine, 17
- Auschwitz, 217n167
- authoritarian, 4, 138
- Avineri, S., 25, 114–15, 121, 128, 132, 157–58, 171, 215n128
- banishment. *See* criminal; exclusion of
- Beisichselbstein*, 11, 13–15, 40–41, 79–80, 85–86, 88, 92, 94, 113, 148, 166. *See also* freedom
- belief, 90
- Berkeley, G., 6
- bestiality, 105–106
- bill of rights, 39
- Bloom, A., 22–23
- bourgeoisie, 22–23, 114, 128, 207nn102–103, 217n160
- bowing, 12
- Brooks, T., 144, 187n58
- Brutus, 155, 158, 162
- Buchwalter, A., 92–93
- Burbidge, J., 168
- Caesar, 3, 155, 158, 162
- capital punishment. *See* punishment; capital
- capitalism, 2, 66, 70–72, 76, 110, 127–28, 130–33, 172, 209n125, 217n160

- categorical imperative, 58–81, 88, 91, 93; and deposits, 63–65, 69–70; and promises, 60–61, 64, 66, 193n35; as contentless, 61–63, 67–69, 71, 88, 91, 193n38, 193n46, 194n50; formula of humanity, 74–76, 78, 91–92; fruit stand example, 60, 62, 70–72, 91, 193n37; universal law formulation, 64, 66, 68, 71, 74–75, 196n99. *See also* *Sittlichkeit*; and the categorical imperative
- character, 52, 90, 92, 127
- charity, 116–17, 121–22, 124–25, 127, 204n38
- Chaucer, G., “Pardoner’s Tale,” 43, 46
- children, 7, 37, 56, 85, 89–91, 100, 168, 203n103
- Christianity, 17, 41, 57, 107, 164, 218n190
- church and state, separation of, 166–67
- citizen, 15, 20, 51, 86–88, 90, 92, 119, 122, 130, 132, 137, 146, 165, 208n109; and recognition, 9–10, 98–99, 101, 146; and representation, 25, 125, 137–38, 176n23
- civil servants, 129–30, 147. *See also* ministers. *See also* executive
- civil society, 32, 40, 42, 46, 98, 109–35, 141, 143, 146–47, 163, 165, 187n58, 208n109
- civil unions, 102–103
- Cole, G.D.H., 123
- colonization, 205n63
- communal property, 60, 62, 72. *See also* property
- communism, 60, 66, 70–71, 76, 130–31, 134, 193n37
- conscience, 55, 57, 80
- consequentialism, 43, 57, 152–54, 215n120
- conservative, 29–30, 106, 117, 127–28, 166, 171–73, 200n61
- constitution: of states, 2, 4, 39, 125, 146, 151–52, 156, 176n21
- constitutional monarch. *See* monarchy; constitutional
- construction, social, 2, 4–8, 11–14, 17–19, 78, 86–88, 90–94, 99, 148, 161, 165, 167, 178n55
- contract, 36, 40, 42. *See also* social contract. *See also* marriage; as contract
- corporations, 25, 117–29, 131–32, 135, 137, 205n72, 206n99, 207n102, 208n114, 210n10
- Cortella, L., 9
- crime, 36, 42–53, 155–56, 158, 185n47, 186n50, 188n64; annulment of, 44, 52–53, 186n52; posited as, 50–51, 53, 190–91n83
- criminal, 43–53, 73, 185n47, 186n50, 187n58, 188n65, 191n87, 196n92; exclusion of, 48–52, 189n75, 190n79, 191n83
- Crusoe, Robinson, 133
- Cullen, B., 124, 206n83
- cultural construction. *See* construction, social
- culture, 2, 18, 33, 78, 81, 85, 88, 90, 164, 167, 170, 178n55, 200n71, 217n160; as freedom, 12–13, 86, 92
- cunning: of reason, 19–20, 157, 161, 214n111; of the universal, 161
- Damjanjuk, J., 51
- De Grazia, S., 153–54
- democracy, 4, 22, 137–38, 142, 172, 176n23
- deontology, 154, 215n120

- dignity, 12, 47, 56, 58, 116, 122–24, 196n92
- divine command theory, 78
- domestic partnerships. *See* civil unions
- Durkheim, E., 109–10, 127, 206n99
- duty, 56–62, 66, 71–77, 79–80, 83, 85, 89–94, 113, 117, 140, 195n67
- end of history, 22–32, 168–69, 173, 180n93. *See also* prehistory
- Engels, F., 180n100
- England, 122
- Epicurus, 19
- equality, 10, 21, 79, 88, 91, 106, 160–62, 164–66, 168–69, 185n47; and civil society, 119, 121, 131; and love, 95–99; of property, 42, 121, 208n116. *See also* recognition; mutual between equals. *See also* women; as unequal
- Eskridge, W.N., Jr., 108
- estates assembly. *See* national assembly. *See also* parliament. *See also* legislature
- ethical life. *See* *Sittlichkeit*
- ethnocentrism, 218n188
- Eumenides. *See* Furies
- evil, 75, 77, 80, 133, 213n99, 217n167; and punishment, 43, 156; and world history, 150; despite good consequences, 152–63, 214n111, 215n120; for Kant, 58, 75, 77, 151–52
- executive, 138, 143, 147. *See also* ministers. *See also* civil servants
- Fackenheim, E.L., 217n167
- family, 15, 32, 40, 59, 62, 90–103, 109, 114, 146, 185n47. *See also* *Sittlichkeit*; and the family
- fetishism, 132–34, 208–209nn118–19, 209n125. *See also* alienation
- feudalism, 9, 42, 133, 139, 142, 144, 154–55, 172
- Fichte, J.G., 129
- financial qualifications. *See* property; qualifications
- folk religion, 198n20
- Forbes, D., 114
- France, 9–10, 47, 49, 51, 99, 126, 142, 144
- free will. *See* freedom; of the will
- freedom, 1, 10–23, 56, 72, 92–93, 101–102, 113, 155; and evil, 213n99; and law, 4, 11, 13–17, 21, 85, 87, 155; and markets, 131; and property, 41–42, 131, 184n26; and punishment, 43–44; and recognition, 94, 98–99, 111, 114, 199n53; and self-interest, 113–14, 115, 127; and spirit, 4, 10–17, 19, 30, 38–43, 85, 88, 92, 104, 112–13, 218n188; and the absolute, 164; as right, 2, 17–18, 22, 39, 155; as Kantian subjectivity, 83–84, 93; as *Sittlichkeit*, 15, 84, 86–88, 92–93, 113; of speech, 138; of the will, 39, 41, 178n61. *See also* culture; as freedom. *See also* *Beisichselbstein*. *See also* self-determination
- French Revolution. *See* revolution; French
- Freyenhagen, F., 76
- fruit stand. *See* categorical imperative; fruit stand example
- Fukuyama, F., 22–26
- fundamentalists, 166–67
- Furies, 43, 46
- Gans, E., 115, 129
- Geiger, I., 66–67
- Geist. *See* spirit. *See also* mind
- gesetzt. *See* crime; posited as

- Germany, 9, 24, 47, 49, 51, 123, 139, 141–43, 172, 191n84, 207n102.
See also Prussia
- God, 3–7, 15–23 *passim*, 33, 78, 96, 150, 153, 164, 166–67; immanent, 5, 7, 167; transcendent, 5, 7, 19, 167
- gods, 86, 88, 171, 179n74
- good, 36, 39, 43, 56–58, 73, 75, 77, 80–83, 85, 89, 111, 173; and evil, 150–54, 156–61, 213n99, 214n111, 215n120; and tragedy, 162; common, 20, 111, 120, 124, 130, 185n43; will, 83, 132
- Greeks, 16, 23, 27, 43, 86–87, 93, 111–12, 141, 170–71. *See also* Athens. *See also* polis
- Grier, P.T., 31, 180n93
- happiness, 20, 56, 79–80, 162, 195n67, 197n122, 215n120. *See also* welfare
- Hardenberg, K.A. von, 25, 28–29, 31, 125
- Hardimon, M.O., 115, 124
- haughty vassal, 139–40, 144
- Hegel, G.W.F.: *Aesthetics*, 32, 35, 85; *Encyclopaedia of the Philosophical Sciences*, 1, 28, 32, 35–36, 38, 198n9; *German Constitution*, 139; *History of Philosophy*, 32, 195n67; *Idea*, 1–4, 7–8, 11, 16, 18–19, 27, 30–31, 37–39, 80, 87, 146, 155–58, 168, 171; *method*, 32–38, 40, 119; *Natural Law*, 63, 65, 69; *Phenomenology of Spirit*, 1, 7–9, 27, 32–38, 61, 63, 87, 94, 99, 139, 144–45, 156, 163; *Philosophy of History*, 11, 23–24, 32, 35, 140, 150, 157; *Philosophy of Mind*, 3, 185n47, 199n53; *Philosophy of Religion*, 32, 35; *Science of Logic*, 1, 192n33, 201n82
- hell, 17, 153–54
- Herman, B., 67
- hero, 3, 216n143
- heteronomy, 7, 11–15, 67–68, 78, 84, 86–88, 94, 113
- Hobbes, T., 33, 39–40, 49, 138, 141, 178n55, 181n139
- honor, 43–44, 47, 116, 121–22
- Humboldt, W. von, 25, 28–29, 31, 125
- humiliation, 117, 121–22, 127, 132, 185n42
- idealism, 5–6, 11–13, 41, 139–46, 178n61, 198n9, 211n36; subjective, 6
- Ilting, K.-H., 40
- imprisonment, abolition of, 48–52, 188n63, 190n79; and rape, 189n77; in “country club” prisons, 48–52; in fortresses, 47–52; lower-class, 47; upper-class, 47. *See also* punishment
- incest, 105–106
- insight, 56–58, 95, 126, 138, 147
- intentions, 5, 16, 55–58, 66, 70–71, 73, 89, 111, 133, 150, 165, 185n49
- international law, 20–21, 31–32, 151–52, 160, 181n132
- invisible hand, 120
- Jena, 25, 215n128
- Jews, 46–47, 107, 217n167
- Kant, I.: *Groundwork of the Metaphysics of Morals*, 67, 71; *Idea*, 31, 80; “*Idea for a Universal History*,” 151, 173; *Metaphysics of Morals*, 72; *Perpetual Peace*, 173. *See also* categorical imperative. *See also* philosophy of history; Kant
- Keynes, J.M., 125, 207n103
- Knowles, D., 124–25

- Kojève, A., 22–26, 180n93
 Korsgaard, C.M., 64–65
- labor unions, 123–25, 131–32, 135
laissez-faire, 16, 110, 171–72
 Lakeland, P., 124
 league of nations, 20, 22, 31, 151–52, 160
 legislature, 132, 137–38, 140, 147–48. *See also* national assembly. *See also* parliament
 liberalism, 22–23, 26, 92, 127–28, 166–67, 172–73, 209n125
 life-world, 62, 70, 193n38
 Locke, J., 33, 36, 39–42, 72, 141, 178n55, 181n139
 Lordship and Bondage. *See* master-slave dialectic
 Louis XIV, 10
 love, 57, 93–102, 199n50
 Lukács, G., 217n160
- Machiavelli, N., 152–56, 158, 213n99, 214n111; *Mandragola*, 153; *The Prince*, 154–55
 MacIntyre, A., 92
 Mandeville, B., 158
 market, 60, 109–10, 114–15, 120, 127–28, 130–35, 151, 184n26, 208n109, 209n125
 market socialism, 110, 133–34. *See also* socialism
 marriage, 94–108, 114, 165, 203n103; as contract, 42, 100; partner, 9, 95, 102–103, 146, 163; same-sex, 18, 22, 30, 101–108, 164, 201n82, 202n91, 203n103. *See also* spirit; and marriage
 Marx, K., 22–23, 30, 43, 109–10, 124, 127, 132–35, 141–42, 173, 184n26, 184n41, 207n103, 209n125, 217n160; *Capital*, 22, 133–34; *Communist Manifesto*, 134, 207n103; *Critique of the Gotha Program*, 134
 Marxists, 110, 114–15, 117–19, 121, 124, 127–30, 132, 135
 master-slave dialectic, 8, 94, 97–98, 101, 114, 145, 200n67. *See also* slavery
 maxim, 57–75, 83, 87, 89, 154, 195n80
 methodological individualism, 40, 182n139
 Meyer, T., 130–32, 207–208nn108–109
 military, 137, 144, 157, 211n36
 Mill, J.S., 208n114, 215n120. *See also* utilitarianism
 mind (*Geist*), 3, 6. *See also* spirit
 ministers, 126, 128, 143–44, 147–48, 212n62. *See also* executive. *See also* civil servants
 Monahan, M.J., 101
 monarchy, 9–10, 25, 99, 137–48, 210n30, 211n47; absolute, 9, 25, 99, 138–39, 142, 144–48, 164, 169; constitutional, 9–10, 25, 28, 142, 145–46; elective, 137, 142
Moralität, 2, 14, 16, 32, 53–83, 85, 88, 90–93, 110, 112–13, 148–50, 158, 161, 170–72, 179n74; as point of view, 55–57, 59
- Napoleon, 25, 126, 138, 215n128
 national assembly, 25, 28, 125–26, 137. *See also* parliament. *See also* legislature
 natural law, 19, 72, 100
 Nazi, 51
 need, 41–42, 56, 60, 70, 76, 79–80, 112, 116–17, 119–22, 184n26, 193n37, 205n63
 Noble Consciousness, 9–10, 99, 145
 objectification, 85–86, 184n26

- objective reason. *See* reason;
objective
- ought, 7, 23, 26–27, 29–31, 55–58,
80–81, 88–89, 93, 181n132
- overproduction, 116, 124–25
- owl of Minerva, 23, 171
- Paraguay, 51
- parents, 56, 91, 95–96, 100
- parliament, 144. *See also* national
assembly. *See also* legislature
- pauperization. *See* poverty
- peace, 20, 31–32, 144, 151–52, 161
- Pelczynski, Z.A., 55
- person, 10, 39–42, 55, 74, 76, 78, 94,
97–102, 111–12, 114, 118, 133–34,
140, 147, 164, 183n13, 200n67
- philosophy of history: Hegel, 21, 157,
160; Kant, 20–21, 151, 156, 160,
198n29
- Pillow, K., 101–102
- Pippin, R.B., 11, 86
- Plato, 27–28, 153, 170–71; *Forms*,
34; *Republic*, 27, 42, 72, 170–71
- Poland, 51
- polarization of classes, 109–10,
114–21, 127–34, 141, 205n63
- police, 118–20, 126–29, 131, 135,
205n59, 207n102, 208n114
- polis*, 16, 86–87, 92, 163. *See also*
Greeks
- political economy, 112
- polygamy, 95–97, 105–106, 200n68
- Popper, K.R., 4, 29, 138, 149, 173
- poverty, 42, 109–10, 114–25, 127–34,
141, 185n47, 205n63
- prehistory, 22. *See also* end of history
- president, 51, 126, 142–46
- prince, 152, 154
- progressive, 30, 171–73
- proletariat, 109, 114–15, 130,
207nn102–103
- promising. *See* categorical imperative;
and promises
- property, 36, 39–42, 55, 59–60,
62–63, 65, 69–72, 78–79, 85, 87,
91, 101, 107, 113, 118, 130–31,
139, 141, 184n26, 193n37,
195n80, 207n103, 208n116;
holder, 9, 146; qualifications,
137–38, 210n10; right to, 39–42,
72, 91, 118; under feudalism, 42,
139, 142–43. *See also* communal
property
- Prosch, M., 124
- Prussia, 25, 28–29, 125, 215n128. *See
also* Germany
- public opinion, 138, 147
- punishment, 36, 43–53, 73, 152–53,
156, 186n50, 187n58; and rights
forfeiture, 188n65; as deserved,
45–46, 185n47, 187–88n63; as *lex
talionis*, 45, 187n58; as retribution,
43, 187n58; capital, 19, 22, 50, 72,
161–62, 164, 188n63, 218n188;
right to inflict, 43–53, 152, 156,
184n39, 184n41, 185n43, 185n47,
186n50, 187–88n63, 188n65,
190–91n83; San Quentin-style,
49–53, 185nn42–43, 191n87;
unified theory of, 187n58. *See also*
imprisonment
- rabble, 116–17, 119, 122, 124
- racism, 105, 218n188
- rape. *See* imprisonment; and rape
- reason, 6, 15, 26–27, 37, 56, 68,
170, 198n20; and freedom, 13–14,
18, 79–80, 83, 85, 113, 166; and
history, 27, 29, 88–89, 149–50,
165–66, 172, 214n111; and right,
15–16, 19, 21, 58, 146, 166, 171;
and recognition, 10, 38, 98, 112–
13, 146, 172; and terror, 110–11,

- 171–72; objective, 11, 14–15, 18, 78, 84–86, 93, 112–14, 148, 165–66, 170. *See also* cunning; of reason
- recognition, 7–9, 15, 23, 26–30, 38, 41–42, 44, 85, 87, 93–95, 100–105, 107–108, 114, 122, 145–46, 163–65, 169–72, 181n120, 184n26, 193n38, 199n53, 200n67, 200n71; and love, 94–95, 97–103, 114; and philosophy, 8, 38, 169–72; and reality, 9, 28, 30–31, 38, 97–107, 145, 163, 169–72, 202n91; and science, 8, 37–38, 170–72; of right, 39, 50–52, 87, 94, 98, 111, 146; mutual between equals, 8–10, 95–99, 101, 102–105, 114, 163, 165, 178n55. *See also* reason; and recognition. *See also* spirit; and recognition
- representatives. *See* citizen; and representation
- revenge, 20–21, 43, 53, 160, 185n47
- revolution, 27, 29, 152, 156, 161, 164, 171–73, 181n118, 218n190; French, 9, 16, 20–21, 99, 110–11, 126, 138, 171–72; industrial, 172; proletarian, 207n102
- Rhodes, leap over, 26, 29–31, 141
- Ricardo, D., 112, 141
- Ridolfi, R., 154
- Rights of Man and the Citizen, 21, 39
- Rome, 23, 87, 91, 155, 162
- Rousseau, J.-J., 36, 39, 176n23
- same-sex marriage. *See* marriage; same-sex
- Say, J.-B., 112
- Schiller, F. von, 149
- Schlegel, F. von, 97–98, 100, 102
- schoolmaster, 158–59, 216n143
- self-defense, right of, 47–48, 50
- self-determination, 4, 10–13, 56, 59, 73, 79, 84–86, 113, 148
- serfdom, 42, 78
- Singer, M.G., 59–63, 66, 68–69
- Sittlichkeit*, 2, 15–16, 30, 55–59, 61, 73, 78–95, 122–23, 148–49, 158–59, 161–63, 172, 198n20; ancient vs. modern, 16, 27, 32, 77, 86, 91, 110–14, 146, 148, 170–71, 179n74; and the categorical imperative, 58–61, 67–68, 70–74, 78–81, 87–92, 192n33, 193n46; and the family, 83, 89, 93–95, 98–100; as civil society, 109–12, 127, 141. *See also* freedom; as *Sittlichkeit*
- slavery, 18, 21–22, 29–30, 65–66, 75–78, 91, 97, 104, 107, 145, 161, 164, 185n43, 196n101, 200n68, 218n188. *See also* master-slave dialectic
- slippery-slope arguments, 105–106
- Smith, A., 109, 111–12, 115, 120–21, 141, 146, 148, 158
- social construction. *See* construction, social
- social contract, 4, 40, 42
- social democracy, 110, 123, 128, 130–35, 137, 172–73, 207n103, 208n111, 209n125
- social engineering, 171–72
- socialism, 22, 42, 72, 107, 123, 125, 127–28, 130, 133–34, 207n103, 217n160. *See also* market socialism
- Socrates, 16, 18, 21, 73, 179n74; *Apology*, 214n115
- solidarity, 110, 127, 141, 199n50, 208n109
- Sophocles: *Antigone*, 163
- sovereign, 138–45, 210n25
- spirit, 2, 10–14, 28, 30–31, 33, 40, 52–53, 78, 84, 88–93, 99,

- spirit (*continued*)
 107, 111–12, 147, 172, 178n55, 202n94, 213n99; and history, 2–8, 22, 24, 27–30, 78–79, 85, 91, 107, 123, 148–49, 160–73, 181n118; and idealism, 5–7, 11, 41; and marriage, 94, 100–108; and philosophy, 169–71; and recognition, 28, 30–31, 98–99, 101, 103–108, 163; as absolute, 18–19, 163–69; as right, 17–22, 39, 78–79, 86, 88–93, 104–105, 149, 156, 158, 160–61, 216n144; objective, 1, 86, 88–91. *See also* freedom; and spirit. *See also* construction, social
- state of nature, 49, 141
- Stein, H.F.K. vom, 25, 212n62
- Steuart, J., 109
- stoics, 18, 21, 73
- Straussians, 153–54
- subjective idealism. *See* idealism; subjective
- subjectivity, right of, 15, 55–58, 80, 84, 88, 111, 113, 147, 164–65
- Sweden, 130
- taxes, 121, 127, 134
- Taylor, C., 179n92
- Taylor, R. 77
- theodicy, 150
- thing-in-itself, unknown, 7
- totalitarian, 1, 4, 138, 173
- tragedy, 18, 149, 162–63, 168, 217n160, 217n167
- transcendental deduction, 32, 34–38, 182n142
- tyranny, 4, 154
- UN Universal Declaration of Human Rights, 208n111
- universalizable, 20–22, 44, 58–76, 78–79, 88–91, 106, 111–14, 151, 157, 160–61, 165–66
- unknown thing-in-itself. *See* thing-in-itself, unknown
- utilitarianism, 76, 152–54, 156–59, 184n41, 185n43, 188n63, 215n120
- utopianism, 27–32, 173, 207n103
- Vernon, J., 101–102
- victim's rights, 188n65
- Villari, P., 154
- virtue, 90, 92–93, 149, 156–57, 162
- voting, 4, 137, 176n23, 209n7, 210n10
- wage, 78, 124–25; living, 76; minimum, 76
- Walsh, W.H., 61, 159
- war, 18, 20, 72, 87, 141, 144, 151–52, 155, 157–58, 163
- Wasserstrom, R., 184n39
- way of the world, 156–57
- wealth, 111, 115–18, 121, 137, 205n63, 207n103, 210n10
- welfare, 36, 56, 111, 118, 120, 122, 128, 130, 132
- welfare state, 121
- Westphal, M., 72, 199n50
- Westphal, K.R., 182n142, 195n80
- Whitman, J.Q., 47, 49, 189n78
- Williams, R.R., 8, 39–40, 43, 55, 94–95, 114, 120, 163, 182n139, 193n38
- women, 108, 189n77, 190n79, 200n61; and the right to vote, 209n7; as unequal, 95–97, 161, 200n68
- Wood, A.W., 13, 25, 39–41, 68–71, 76, 113, 115, 119, 124–25, 142,

- 158–61, 176n21, 181n120, 190n83, 196n98, 212n62
- world historical: individual, 138, 140, 155, 158–59, 202n94; nation, 18, 24–25, 91, 218n188
- world history, 3, 19, 22, 24–25, 28–29, 35, 37, 91, 149–50, 157–62, 164, 169, 218n188
- world spirit, 18, 21–22, 140, 149–50, 154–55, 160–62, 165, 218n188. *See also* spirit
- wrong, 17–18, 21–22, 36, 42, 44, 51–52, 57, 59–60, 64–66, 69, 73, 77–78, 90–91, 104, 116, 119–20, 149, 158, 162, 185n43, 186n50, 187n57, 188n64, 196n89, 215n120

In this book, Philip J. Kain introduces Hegel's *Philosophy of Right* by focusing on disagreements, both with standard interpretations of his work and with Hegel himself. Arguing that Hegel's justification for punishment ultimately fails, Kain shows how this failure brings into focus the inherent difficulties in justifying punishment at all, thus producing a valuable Hegelian argument *against* punishment. Whereas many of Hegel's critics have argued that he misunderstands Kant's categorical imperative, Kain argues the opposite: that Hegel has a sophisticated understanding of it and simply attempts to provide a broader ethical context for Kant's position. In addressing these and other questions, such as whether Hegel's theory of recognition, properly understood, can provide philosophical support for same-sex marriage, and whether supporting monarchy over democracy means that Hegel seeks less rather than greater power for the state, Kain makes Hegel's work more approachable by drawing out philosophical points of independent importance.

Philip J. Kain is Professor of Philosophy at Santa Clara University and the author of several books, including *Hegel and the Other: A Study of the Phenomenology of Spirit*, also published by SUNY Press.

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